

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : Cr. 08-605
v. : U.S. Courthouse
NORBY MARIN MORENO, : Brooklyn, New York
Defendant. : November 25, 2008
1:15 p.m.

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE CHARLES P. SIFTON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: BENTON J. CAMPBELL
United States Attorney
By: ALI KAZEMI
JOHN NATHANSON
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Proceedings recorded by mechanical stenography, transcript
produced by CAT.

1 (Open court-case called.)

2 THE COURT: Would you swear the interpreter.

3 (Interpreter sworn: Carmen Pascual.)

4 THE COURT: Who is appearing for the prosecution?

5 MR. KAZEMI: Ali Kazemi. With me is John Nathanson
6 as well as Special Agent Salvatore Aceves. I apologize for
7 being late. There was a misunderstanding about the start
8 time.

9 THE COURT: Who is representing Miss Marin Moreno?

10 MS. HARRIS: Justine Harris, Federal Defenders, for
11 Miss Marin Moreno. Good afternoon.

12 THE COURT: All right. This matter is before me on
13 an application to suppress evidence. Why shouldn't I grant
14 this application without a hearing?

15 If you presented an affidavit of the sort you
16 presented to me to a United States Magistrate, I would hope
17 the magistrate would have denied an application to search.

18 You haven't given me any indication of the
19 reliability of the ultimate source of the information. You
20 have given me generalities about how the investigation has
21 previously produced reliable information, but that's not the
22 standard, the standard is, Where did this come from?

23 If not, what's the name of the informant? And, at
24 least, a statement that that particular individual has proven
25 reliable in the past because -- and some statement of whether

1 it led to arrest, indictment, convictions.

2 You haven't done anything of that sort. I don't know
3 why I should give -- I mean, if your adversary presented
4 conclusions, an affidavit of that conclusory nature, you'd ask
5 me to deny the motion without a hearing.

6 Why shouldn't I simply grant the motion under these
7 circumstances without a hearing?

8 MR. KAZEMI: Agent Aceves is here and he is prepared
9 to testify as to the reliability --

10 THE COURT: You say that is adequate, just to wait
11 until you walk into the courtroom and beg to amplify your
12 showing by affidavit?

13 I'll tell you what I'm going to do, I'm going to
14 take the testimony from your witnesses because I don't think,
15 as someone said, the public should suffer because somebody
16 stumbled, but I'm going to consider in deciding this matter
17 the deficiencies in the manner in which the issues were
18 raised. I'm going to reserve on whether you're entitled to a
19 hearing in the circumstances.

20 Go ahead and call your witnesses. Let's get started
21 and I will hear any witnesses the defense wants to call --

22 MS. HARRIS: Your Honor --

23 THE COURT: -- and reserve decision.

24 What?

25 MS. HARRIS: I wanted to add on that issue, I would

1 make a note, and I'll pull the transcript, that actually on
2 the day of Miss Marin Moreno's arrest, I made in court as
3 motion for lack of probable cause based on the deficiency --

4 THE COURT: To me?

5 MS. HARRIS: To the MAGISTRATE JUDGE at the time,
6 your Honor, directed to the Magistrate Judge.

7 So it was an issue that I had raised from the very
8 first day of Miss Marin Moreno's arrest.

9 THE COURT: You certainly adequately raised it in
10 your motion before me and it didn't get much of a response,
11 did it?

12 All right. Do you have any witnesses at this point
13 you intend to call? Incidentally, your client has not -- does
14 she have an affidavit that she hasn't signed --

15 MS. HARRIS: Your Honor --

16 THE COURT: -- or you're relying on the recitations
17 by the prosecution?

18 MS. HARRIS: Essentially, the probable cause issue
19 doesn't raise any facts within my client's knowledge for her
20 to put at issue with respect to an affidavit.

21 I think it's undisputed among the parties that she,
22 in terms of standing issue, that she was renting that room at
23 166, so in terms of the privacy --

24 THE COURT: Let's go ahead. Let me hear any
25 witnesses the prosecution has, although I think the most

1 essential fact here is who in the world gave this information
2 and why should I rely on it in the circumstances.

3 Go ahead. I've got a letter from Miss Harris, dated
4 yesterday, saying she wants to call an unidentified expert
5 whose name and qualifications will be provided shortly.

6 When are you going to get that information?

7 MS. HARRIS: I hope within, I would say,
8 approximately 48 hours. I have a couple of people I talked
9 to. There is an issue of scheduling problems, matching up
10 their schedules with the trial date.

11 THE COURT: You'll do that by the end of the day
12 tomorrow, is that what you're saying?

13 MS. HARRIS: Midday Thursday, would that be
14 sufficient, your Honor.

15 THE COURT: Yes.

16 MR. KAZEMI: Thursday is Thanksgiving.

17 MS. HARRIS: Sorry.

18 THE COURT: The end of the day Friday?

19 MS. HARRIS: I'll file it by the end of the day
20 Friday, which may mean in actual fact that I'll do it by the
21 end of the day tomorrow.

22 THE COURT: If the government has any opposition, I
23 assume I'll get that by the end of the day on Monday.

24 MR. KAZEMI: Yes, your Honor, we do intend to file a
25 motion to preclude the expert testimony.

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1 THE COURT: Why don't you sit and read what you get
2 before you respond.

3 All right, go ahead. What's next?

4 MR. KAZEMI: The government calls Special Agent
5 Salvatore Aceves.

6 I want to provide your Honor with the government's
7 3500 material.

8 SALVATORE ACEVES,

9 called as a witness, having been first duly sworn,
10 was examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. KAZEMI:

13 Q Good morning, Agent Aceves.

14 A Good morning.

15 Q Good afternoon.

16 By whom are you employed?

17 A The Drug Enforcement Administration.

18 Q Is the administration also known as the DEA?

19 A Yes.

20 Q What's your title at the DEA?

21 A Special Agent.

22 Q And how long have you been a DEA special agent?

23 A A little over three and a half years.

24 Q Directing your attention to the morning of July 31, 2008.

25 Where were you assigned at that time?

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1 A The New York Field Division.

2 Q Do you have information involving the investigation of
3 the defendant in this case, Norby Marin Moreno?

4 A Yes.

5 Q What sources were used in connection with this
6 investigation?

7 THE COURT: Look, it's not, I read it in Time
8 Magazine. You've got to get to specific facts and tell me who
9 said what and why that particular statement, or that speaker
10 is reliable. I don't want generalities, any more generalities
11 about a reliable investigation.

12 Q Who specifically did you speak with in connection with
13 the investigation?

14 A Special Agent Richard Walsh.

15 Q And had you previously spoken with Richard Walsh in
16 connection with other investigations?

17 A Yes.

18 THE COURT: Is he a fellow agent of the Drug
19 Enforcement Administration?

20 THE WITNESS: Yes, your Honor. He's an agent who
21 was stationed in New York City for several years who I worked
22 with in New York City.

23 THE COURT: So agent to agent communications, I
24 assume, are accepted or generally reliable. What I need is
25 what the other agent told you, not only what information he

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1 relayed to you but why that was the ultimate source to be
2 relied on.

3 A Special Agent Richard Walsh has an ongoing investigation
4 in Colombia, where he is working closely with Colombian
5 National Police, the CNP. They worked in connection with
6 them, I believe, always since DEA's been in Colombia.

7 THE COURT: Any particular officials in this foreign
8 police force or not?

9 A Yes. I don't have the names of the officials he's
10 working with because I work -- I speak with Richard, with
11 Special Agent Walsh, and Special Agent Walsh works with the
12 CNP.

13 THE COURT: And this gentleman in the Colombian
14 Police Force passed on information he received from informants
15 or not?

16 THE WITNESS: Information that he's receiving from
17 his investigation.

18 THE COURT: You can't say whether it's gossip,
19 hearsay, rumor or some particular reliable individual?

20 THE WITNESS: I can tell you that it's from a very
21 reliable source, and to tell you specifically where this
22 information is coming from reveals a large portion of this
23 investigation which would result in ruining an investigation
24 that is investigating high-level traffickers who are sources
25 of supply and trafficking through various countries along the

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1 way --

2 THE COURT: Where is this agent from, the DEA agent
3 who you were talking to, where is he located?

4 THE WITNESS: He's located in Bogota, Colombia, your
5 Honor.

6 THE COURT: Why am I not hearing from him rather
7 than this gentleman? He at least could tell me the name of
8 the police officer in Colombia who furnished the information
9 and perhaps could tell me where the police officer got his
10 information and why that source of information is better than
11 gossip or may be better than somebody out to get their
12 neighbors in trouble or worse.

13 Why can't I hear from this gentleman in Colombia?
14 He works for the United States government.

15 BY MR. KAZEMI:

16 Q Agent Aceves, in working with Agent Walsh --

17 THE COURT: I'm asking you, counsel. Why am I not
18 hearing from him?

19 MR. KAZEMI: Your Honor, Agent Aceves has been in
20 direct communication with Agent Walsh in Colombia --

21 THE COURT: I gather that. I just heard that. But
22 this agent is unable to tell me the name of the Colombian
23 police officer who is the source of the information, the
24 nature of the information given by particular individuals or
25 what their reliability is.

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1 MR. KAZEMI: Agent Aceves can tell you the nature of
2 the information that's been received and he can also testify
3 as to multiple seizures of heroin and cocaine that have been
4 based on the same investigation that led --

5 THE COURT: Same general investigation?

6 MR. KAZEMI: No, the same limited investigation of a
7 particular organization based in Bogota that the defendant is
8 involved in, and Agent Aceves has three specific examples of
9 seizures of cocaine and heroin that have been seized as a
10 result of this on-going investigation.

11 THE COURT: Sounds like then you couldn't have done
12 any better if you tried with your opposing papers and that we
13 very well may get to the point where the suppression motion is
14 granted because no one can reliably say the defendant wasn't
15 set up.

16 I don't know whether you haven't thought it through
17 or you thought it through and there's nothing better you can
18 give me.

19 MR. KAZEMI: Your Honor, could I have a moment to
20 speak with Agent Aceves?

21 THE COURT: Yes. Maybe it ought to be more than a
22 moment where you can consider why not bring this gentleman up
23 here and get it all out. We can protect individuals and
24 methods and things of that sort from others, but this woman is
25 entitled to make sure that she wasn't -- she's entitled to

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1 have me consider whether she wasn't set up by somebody in her
2 country.

3 Why don't you talk to your agents and see what we
4 ought to do here.

5 MR. KAZEMI: Thank you.

6 MS. HARRIS: I understand the conversation is going
7 to be focused on the disclosure, the propriety of the
8 disclosure and any additional information?

9 THE COURT: I don't see what difference it makes at
10 this point. We haven't gotten anywhere yet.

11 (Pause.)

12 THE COURT: I asked you to come on back in because a
13 number of people haven't had lunch, waiting for this thing to
14 get started, so we can either take this up this afternoon or
15 we can go over to sometime next week when you're better
16 prepared.

17 MR. KAZEMI: Your Honor, I think we'll have an
18 answer within two minutes. Can I approach sidebar?

19 THE COURT: For what purpose? We're all here. Why
20 do this at the sidebar?

21 MR. KAZEMI: We're communicating with the agents in
22 Colombia. The source in Colombia has yielded a tremendous
23 amount of valuable information leading to multiple seizures of
24 large quantities of narcotics --

25 THE COURT: What do you want to do?

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1 MR. KAZEMI: We are waiting to hear back from
2 Colombia as to whether we can reveal the source of information
3 for the purpose of this hearing and we have left a message and
4 we're currently trying to contact another --

5 THE COURT: There is only one source of all of this
6 information?

7 MR. KAZEMI: It's Agent Walsh, we're trying to
8 contact Agent Walsh, who is supervising the investigation in
9 Colombia.

10 THE COURT: Why don't you come on back after two and
11 tell me what you find out.

12 MR. KAZEMI: Okay. Thank you, your Honor.

13 (Luncheon recess.)
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A F T E R N O O N S E S S I O N

THE COURT: How long are you prepared to continue this afternoon?

MR. KAZEMI: We are available for the entire afternoon. We would like to recall Agent Aceves.

THE COURT: Go ahead.

(Witness resumed.)

BY MR. KAZEMI:

Q Special Agent, I'd like to remind you, you are still under oath.

A Yes.

Q Could you please describe for the court the source of information that was used in the investigation of the defendant.

A The source of information was a Title III investigation targeting a drug trafficking organization in Cali, Colombia, trafficking large amounts of cocaine and heroin to the United States through various countries along the way; namely, Panama, Guatemala, Mexico, as well as through Texas and into New York City.

Q When you say Title III, you mean there was a wiretap on a phone in Colombia?

A Yes. Agent Walsh, who I mentioned before, was in the Bogota wire room at the time, that morning, July 31st, listening to the calls as they were coming in, and he was

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1 giving me the information almost real-time as it came in.

2 For example, one call was, I just received a phone
3 call. There's a courier in New York. I'll call you back with
4 more information.

5 I would receive another phone call. Her name is
6 Norby, an Hispanic woman, et cetera.

7 THE COURT: The person you're quoting is this Agent
8 Walsh?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: And he's reporting to you the substance
11 of what he hears on a wiretap?

12 THE WITNESS: Yes, your Honor.

13 THE COURT: Okay.

14 Do you have any information as to whose phone was
15 being tapped or any of the circumstances which led to this
16 wiretap?

17 Before you answer that question, is there any reason
18 I shouldn't see the affidavit on the basis of which this Title
19 III wiretap was issued? That would probably give me as much
20 information as the circumstances which led to the monitoring?

21 Do you have access to that?

22 MR. KAZEMI: I believe that affidavit was submitted
23 in Colombia because it is a Colombian wiretap. We could
24 contact Agent Walsh --

25 THE COURT: What do you mean it was a Title III

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1 wiretap?

2 MR. KAZEMI: It was a judicial wiretap instituted in
3 Colombia through Colombian --

4 THE COURT: Under US Title III, under the statute?

5 MR. KAZEMI: That's correct.

6 THE COURT: It was under a Colombian statute?

7 MR. KAZEMI: That's correct. It's a Colombian
8 wiretap instituted by Colombian law enforcement authorities
9 working in conjunction with DEA.

10 THE COURT: You don't have the order or the
11 affidavit?

12 MR. KAZEMI: At this time I don't, your Honor. I
13 believe the affidavit is in Spanish because it was in
14 Colombia.

15 THE COURT: That may be, but it doesn't mean that
16 it's not subject to translation. If you don't have it now why
17 don't you, after we're finished, see what, if any, difficulty
18 there would be getting both the Colombian order and
19 information on the basis of which it was issued.

20 All right, go ahead.

21 BY MR. KAZEMI:

22 Q Agent Aceves, had this wiretap in Colombia also yielded
23 information in connection with other narcotics seizures?

24 A Yes. The same investigation yielded a seizure of
25 35 kilograms of cocaine in Cali, Colombia from a Luis

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1 Gonzales. I believe those narcotics were concealed in a
2 vehicle. There was another --

3 THE COURT: Hold on just a moment.

4 Who did the seizing?

5 THE WITNESS: The Colombian National Police, your
6 Honor, in conjunction with DEA.

7 THE COURT: Was this Agent Walsh again, did he
8 participate in that seizure, seize the cocaine?

9 THE WITNESS: Yes, your Honor, he participated in
10 the seizure. I'm not sure if he was present at the time it
11 was being removed from the vehicle, but he did participate in
12 the seizure.

13 THE COURT: You better pin down whether he just
14 heard about this or whether it went beyond that.

15 Go ahead.

16 BY MR. KAZEMI:

17 Q Were there any other seizures in connection with this
18 investigation, this particular wiretap?

19 A Yes. There was a five-kilo seizure of heroin in the Cali
20 Airport that was with Alexander Valasco. There was another
21 seizure --

22 THE COURT: Who is Valasco?

23 THE WITNESS: He's the target.

24 THE COURT: He was the individual from whom it was
25 seized?

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1 THE WITNESS: Yes, your Honor.

2 THE COURT: How about the car --

3 THE WITNESS: Luis Gonzales.

4 THE COURT: Somebody named Gonzales?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Okay.

7 THE WITNESS: Another seizure was of 56.7 kilograms
8 of cocaine in Buenaventura, Colombia. It was concealed within
9 a hidden compartment in a regular passenger bus. The bus was
10 full of passengers at the time, and I don't believe they were
11 arrested at the time.

12 THE COURT: You're saying all of this resulted from
13 this wiretap order and whatever the basis was for it, is that
14 it?

15 THE WITNESS: Your Honor. There have been multiple
16 wiretaps under this specific organization and I can't tell you
17 right now if all of these seizures were from the exact same
18 phone that the defendant's information came from, but I can
19 say that this was all from the specific organization that is
20 being investigated by Special Agent Richard Walsh with the
21 Colombia National Police.

22 If it were a different organization, it would be
23 under a different case number, a different investigation
24 entirely. We're not allowed to include seizures from other
25 cases, from other organizations under the same case or else it

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1 would sort of be like double dipping.

2 THE COURT: You told me about three separate
3 seizures. Do you know whether any of these was based on
4 information gained from the particular telephone on which
5 Agent Walsh heard the information about the New York courier?

6 THE WITNESS: At this time I cannot tell you whether
7 or not any of those seizures were from the same phone as the
8 information from the defendant's information. Special Agent
9 Walsh said he would get that information for us.

10 THE COURT: Go ahead.

11 BY MR. KAZEMI:

12 Q Could you please just remind the court, what information
13 did Agent Walsh pass on to you with regard to the defendant in
14 this case?

15 A I was told that a heavyset Hispanic woman named Norby
16 would be at the Metro Hotel in Room 166 with approximately
17 1,200 grams of heroin and that she'd be waiting for a male
18 known only as Pintora to arrive and that either he or someone
19 would arrive to receive the heroin; that he would be giving
20 her \$10,000.

21 We were also told that beforehand, he would contact
22 her and he would tell her that he was calling on behalf of El
23 Tio, which means the uncle.

24 He was calling on behalf of El Tio, and that was
25 their code to her for her to proceed as scheduled.

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1 Q After obtaining this information, did you establish
2 surveillance at Room 166 of the Metro Hotel?

3 A Yes.

4 Q Approximately what time did you establish the
5 surveillance?

6 A Approximately noon.

7 Q Can you please describe for the court the layout of the
8 Metro Hotel.

9 A The Metro Hotel is on the south side of Queens Boulevard.
10 There's next to the lobby and reception, there's an archway
11 where one can drive in.

12 To the left are rooms, a slanted parking lot with
13 slanted parking. On the right there's a brick wall that goes
14 all the way down to most of the end of the parking lot. The
15 park lot, after the rooms on the left end, it opens up into a
16 large square parking lot.

17 Q Were you the first agent to establish surveillance at the
18 Metro Hotel that day?

19 A Yes.

20 Q In what location did you establish your surveillance?

21 A In the -- just at the beginning of the gravel parking lot
22 facing Room 166.

23 THE COURT: Excuse me just a minute.

24 MR. KAZEMI: May I approach the witness?

25 THE COURT: Yes.

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1 Q Agent Aceves, I'm showing you what has been marked for
2 identification as Government Exhibit 3. Do you recognize that
3 document?

4 A Yes.

5 Q What is that?

6 A This is a picture of the --

7 Q Hold on a second.

8 Go ahead.

9 A This is a picture of the Metro Hotel parking lot, from
10 the parking lot looking back. As you can see, on the right of
11 this picture there is brick, that's where the rooms are.

12 Q Is this an accurate depiction of the parking lot as you
13 saw it on July 31st?

14 A Yes. On July 31st there were more vehicles in the
15 parking lot, but this is what it looked like.

16 THE COURT: Let me see the document, please.

17 If there is no objection, I'll consider this on the
18 hearing. All right.

19 If you want, Miss Harris, you can come up and look
20 over our shoulder. I'm just trying to get --

21 MS. HARRIS: I have a copy, your Honor.

22 MR. KAZEMI: There is also a courtesy copy provided
23 to the court.

24 THE COURT: In here?

25 MR. KAZEMI: Yes.

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1 THE COURT: Can you point out to me where you were
2 and where the room was?

3 THE WITNESS: Yes, your Honor. There's a better
4 picture.

5 THE COURT: What am I looking at here?

6 THE WITNESS: The room is approximately at the tip
7 of this red van, and I was approximately here in a vehicle.

8 I think there's another picture that shows better,
9 that has actually a cone placed where the room is and a cone
10 placed where the vehicle was.

11 THE COURT: All right.

12 For the benefit of Miss Harris, you were saying the
13 room is in front of this red van?

14 THE WITNESS: The room is the second room in, which
15 is at the wheel of this red van.

16 THE COURT: There's a sidewalk or corridor that goes
17 down here?

18 THE WITNESS: Nothing here, it just comes right up
19 to the building.

20 THE COURT: You were somewhere off the picture --

21 THE WITNESS: Yes. There's another picture I
22 believe --

23 MR. KAZEMI: I have several additional pictures,
24 your Honor, which I can present to the court.

25 THE COURT: Okay.

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1 MR. KAZEMI: I'd move to admit Government Exhibit 3
2 into evidence.

3 THE COURT: All right, I will consider it.

4 (So marked.)

5 BY MR. KAZEMI:

6 Q Agent Aceves, I'm now going to show you what has been
7 marked for identification as Government Exhibit 4.

8 MR. KAZEMI: May I approach, your Honor?

9 THE COURT: Yes.

10 Q Do you recognize this document?

11 A Yes.

12 Q Can you please tell the court what that is.

13 A This is a picture of the parking lot from another angle,
14 and in this picture I have placed an orange parking cone in
15 the general vicinity of where my van was parked the day of
16 July 31st.

17 Q When you parked your van at the cone, which way was your
18 van facing?

19 A Facing Room 166.

20 Q Facing toward the Metro Hotel rooms?

21 A Yes.

22 MR. KAZEMI: Your Honor, I move to admit Government
23 Exhibit 4 in evidence.

24 THE COURT: All right. There is no objection, it
25 will be received.

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1 (So marked.)

2 A Again you can see the red van there on the left and on
3 the right there's an orange cone. That's approximately the
4 position the van was in.

5 THE COURT: The red cone indicates what, where ---

6 THE WITNESS: Where my surveillance van was, and the
7 red van, the front passenger side is where the door to Room
8 166 is.

9 There will be another photograph showing that door
10 clearer with the cone in front of it.

11 THE COURT: And Queens Boulevard is back of where
12 the photographer was standing?

13 THE WITNESS: Correct, to my back, through archway.

14 MR. KAZEMI: May I approach, your Honor?

15 THE COURT: Yes.

16 Q Agent Aceves, I'm now showing you what has been marked
17 for identification as Government Exhibit 5. Do you recognize
18 that document?

19 A Yes.

20 Q Could you please tell the court what that document is.

21 A In this picture, I'm taking the picture from the point of
22 view of the surveillance vehicle where it would have been that
23 day -- or was that day, and I placed the orange cone in front
24 of Room 166.

25 So this is taken from the angle of the surveillance

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1 vehicle at Room 166.

2 Q So the orange cone is in front of Room 166?

3 A Yes.

4 Q Is that essentially the same view of Room 166 that you
5 had on July 31, 2008?

6 A Yes, minus that stick. It was not there.

7 This is from where my vehicle was that day and this
8 cone is directly in front of Room 166.

9 THE COURT: Okay.

10 Q Were there any vehicles obstructing your view on that
11 day?

12 A No.

13 MR. KAZEMI: Your Honor, I move Government Exhibit 5
14 into evidence.

15 THE COURT: All right, I'll consider it.

16 (So marked.)

17 Q And finally, Agent Aceves, I'd like to show you what's
18 been marked for identification as Government Exhibit 6. Do
19 you recognize this photograph?

20 A Yes.

21 Q Can you please tell the Court what that photograph is?

22 A This is a photograph of the interior corridor. Room 166
23 is at the very end on the right, just beyond that last
24 cleaning cart.

25 Q These are interior doors to the rooms on the first floor

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1 of the Metro Hotel?

2 A Yes.

3 Q And one of those doors is the door to Room 166?

4 A Yes.

5 Q Can you tell from looking at that picture which door is
6 the door to Room 166?

7 A I believe it is the door just beyond the cleaning cart.

8 MR. KAZEMI: Your Honor, I move Government Exhibit 6
9 into evidence.

10 Would you like us to review each of the photographs
11 again, your Honor?

12 THE COURT: We can deal with this one.

13 Could you tell us what we're looking at here in
14 Exhibit 6?

15 THE WITNESS: Your Honor, a picture of the inner
16 corridor, and Room 166 would be near the end, the last door on
17 the right-hand side just beyond the cleaning cart.

18 THE COURT: Is there a door from this into the
19 parking area where you were?

20 THE WITNESS: At the end of the corridor, yes, your
21 Honor, there is at the end of the corridor also where the
22 photographer is standing, and to his right, to the right of
23 the picture, there's another corridor with another exit at
24 that end as well.

25 THE COURT: Is there a door from each of these rooms

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1 into the parking area or not?

2 THE WITNESS: All the doors on the right have --
3 also have doors to the parking lot.

4 THE COURT: All the rooms to the right looking at
5 this exhibit?

6 THE WITNESS: Yes, looking at this exhibit, your
7 Honor, every room to the right also has a door opening to the
8 parking lot.

9 THE COURT: And one opening into the corridor?

10 THE WITNESS: Yes.

11 THE COURT: Go ahead, what's next?

12 Q Just to confirm, Agent Aceves, Room 16 had a door that
13 opened to the interior of the hotel and a door that opened to
14 the exterior to the parking lot?

15 A Yes.

16 Q Turning back to July 31, 2008, what door were you
17 observing from your van?

18 A The exterior door of Room 166.

19 Q So you did not have a view of the interior door from your
20 vantage point?

21 A No.

22 Q When you initially established surveillance of Room 166,
23 were with you aware that Room 166 had an interior door?

24 A No.

25 Q Did other agents subsequently establish surveillance of

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1 Room 166?

2 A Yes.

3 Q Do you recall who those agents were?

4 A Yes. Special Agents David Samilo, Elizabeth O'Connor,
5 John Francola, Jeff Senn, Oresf Zachariasevych, and Ramon Sy.

6 Q Do you recall approximately where they were located in
7 conducting their surveillance?

8 A Some agents were in the parking lot and some agents were
9 on Queens Boulevard.

10 Q Did there come a time when you observed an individual
11 entering Room 166?

12 A Yes.

13 Q And this was from your vantage point in the hotel parking
14 lot as depicted in Exhibit 5?

15 A Yes.

16 Q So she entered Room 166 through the outer door?

17 A Yes.

18 Q Approximately what time did the individual enter Room
19 166 --

20 THE COURT: Where did she arrive from, did she drive
21 up, walk in?

22 THE WITNESS: Your Honor, when I saw her, I first
23 noticed her because it was a heavysset Hispanic woman fitting
24 the description.

25 She walked through -- if you look in that picture,

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1 to the upper left there is sort of an archway there. She came
2 walking on foot through that archway. I don't know if she was
3 dropped off or --

4 THE COURT: You say archway --

5 THE WITNESS: I'm sorry. It's a square entrance,
6 almost like a garage entrance. But that's the entrance for
7 cars to come in and out of the hotel parking lot from Queens
8 Boulevard.

9 THE COURT: In other words, the cars go around the
10 building and come into the part of the parking lot we are
11 looking at?

12 THE WITNESS: Straight through that opening is
13 Queens Boulevard. So this sort of driveway is perpendicular
14 with --

15 THE COURT: She came walking through that entrance
16 to the parking lot -- from Queens Boulevard, presumably?

17 THE WITNESS: Correct. I don't know if she was
18 dropped off or if she walked. Wherever she was, alls I saw
19 was a heavyset Hispanic woman walking through there in the
20 direction of 166. Since there were few people in that parking
21 lot that morning, I noticed her, I observed her, I kept my
22 eyes on her until she reached 166.

23 THE COURT: What time of year was this again?

24 THE WITNESS: July.

25 THE COURT: How was she dressed?

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1 THE WITNESS: I don't remember exactly what clothing
2 she was wearing, but it was --

3 THE COURT: Was she carrying anything?

4 THE WITNESS: She was carrying 1 or 2 small plastic
5 bags, maybe like plastic bags from a deli.

6 THE COURT: You mean the kind of bags where somebody
7 buys soda and they say, do you want it in a -- put it in a
8 bag, that kind of bag?

9 THE WITNESS: Correct, your Honor.

10 THE COURT: All right. What;s next?

11 Q What happened when the defendant approached Room 166?

12 A The defendant approached 166. She entered, she stepped
13 inside a for a second --

14 THE COURT: Did she have a key or was the door
15 unlocked, or did you notice?

16 THE WITNESS: Did not notice, your Honor.

17 THE COURT: Okay.

18 THE WITNESS: She entered. She stepped in, stepped
19 back out, stepped in and stepped back out, all the while
20 holding a cell phone in her hand to her ear.

21 I could not tell whether she was speaking or just
22 listening, but she stepped in, looked around -- sorry, she
23 stepped out of the room, looked around, stepped back in,
24 stepped back out twice and returned to her room, closed the
25 door behind her.

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1 THE COURT: What happened to the bags, did you
2 notice whether she left them when she came back out, had she
3 left the bags in the room?

4 THE WITNESS: I don't recall, your Honor.

5 Q Did there come a time when a member of your team learned
6 that there was an interior door to Room 166?

7 A Yes.

8 Q Do you recall which member of your team discovered the
9 interior door?

10 A I don't recall specifically whether it was Special Agent
11 O'Connor or Special Agent Ramona Sy.

12 THE COURT: You became aware of this while you were
13 still conducting surveillance, I take it?

14 THE WITNESS: Correct, your Honor. While we are
15 conducting surveillance and keeping an eye on the front door
16 other agents are putting themselves in a position --

17 THE COURT: And you had some sort of radio
18 communication?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: And somebody from your group told you
21 there's another door, or words to that effect?

22 THE WITNESS: Yes, your Honor.

23 Q So the members of your team discovered the interior door
24 after the defendant had already entered the room?

25 A Yes.

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1 Q Approximately how long was the defendant inside the room
2 before you discovered that there was an interior door?

3 A I don't remember the exact time. I can approximate that
4 it was maybe half an hour or more.

5 Q Did there come a time after the interior door --

6 THE COURT: I'm sorry. Did the person who told you
7 about the interior door tell you where he or she was located
8 or how she came to learn of this or not?

9 THE WITNESS: Yes, your Honor.

10 We'd been told that somebody walks down the inner
11 corridor and noticed that there were doors to the inside as
12 well, and then we placed an agent in the inner corridor to
13 maintain surveillance there as well.

14 THE COURT: All right. Go ahead.

15 Q Did there come a time after the interior door was
16 discovered that your team decided to approach Room 166?

17 A Yes.

18 Q What members of your team decided to approach Room 166?

19 A Elizabeth O'Connor, David Samilo and myself.

20 Q Why did you decide to approach the room at that point?

21 A We believed, since up till then we did not know there was
22 an interior door; the courier could have left through the
23 door, Pintora could have entered through the door.

24 THE COURT: I'm sorry. When you decided to go in,
25 you did or didn't know about the interior door?

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1 THE WITNESS: At this point we did know about the
2 interior door.

3 THE COURT: Did know. Okay.

4 THE WITNESS: However, we did not know that -- we
5 did not know whether or not -- during the time we did not know
6 if somebody else could have entered or exited through that
7 interior door. The drug transaction could have already taken
8 place while we were merely surveilling the exterior door.

9 Q How did you decide to approach Room 166 at that point?

10 A We start decided that Special Agent Elizabeth O'Connor
11 would ask a cleaning lady to knock on the door.

12 Q What did you hope to accomplish by having a cleaning lady
13 knock on the door?

14 A Wanted to see if Pintora was already inside and if the
15 defendant was still inside.

16 Q Did the cleaning lady agree to knock upon the door?

17 A Yes.

18 Q Did she in fact knock on the door?

19 A Yes.

20 Q Please tell the court the locations of yourself, Agent
21 O'Connor and Agent Samilo at the time the cleaning lady
22 knocked on the door.

23 A Agent O'Connor was with the cleaning lady at the door and
24 Agent Samilo and myself were approaching the door.

25 Q And were you at the interior door or the exterior door at

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1 that time?

2 A The exterior door.

3 Q Did you see what happened when the cleaning lady in fact
4 knocked on the exterior door?

5 A From my vantage point I saw that the cleaning lady
6 knocked --

7 THE COURT: Did she say anything?

8 THE WITNESS: I did not hear if she said anything.

9 THE COURT: "Room service" or anything of that sort?
10 Go ahead, what's next?

11 THE WITNESS: The cleaning lady knocked. The door
12 was opened by the defendant. The defendant saw the cleaning
13 lady and then the defendant saw Agent O'Connor.

14 Upon seeing Agent O'Connor she attempted to close
15 the door. I saw Agent O'Connor push the door open and enter.
16 And then I saw Agent Samilo enter behind her. I entered
17 immediately after Agent Samilo.

18 When I entered the room, I saw Agent O'Connor
19 struggling with the defendant. Agent Samilo went to assist
20 her and I went through the rest of the room, rest of the hotel
21 room to conduct a security sweep to make sure nobody else was
22 in the room.

23 Q You testified that Agent Samilo and Agent O'Connor were
24 struggling with the defendant?

25 A Yes.

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1 Q Was the defendant eventually subdued?

2 A Yes.

3 Q Was she handcuffed?

4 A Yes.

5 Q Why did you handcuff the defendant?

6 A For our safety.

7 Q Is this the DEA protocol?

8 A Yes.

9 Q After the defendant was handcuffed, did you attempt to
10 speak with the defendant?

11 A Yes.

12 Q Did the defendant speak English?

13 A No.

14 Q What language were you speaking with the defendant?

15 A I should say -- I don't know if she does speak English.
16 She did not speak English with us.

17 Q What language were you speaking with the defendant?

18 A Spanish.

19 Q And you're fluent in Spanish?

20 A Yes.

21 Q Have you ever worked as a Spanish translator?

22 A Yes.

23 Q Did any of the other agents speak with the defendant?

24 A Through me.

25 Q And which agents spoke with the defendant?

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1 A Agent O'Connor.

2 Q So I take it that agent O'Connor doesn't speak Spanish?

3 A No.

4 Q Did the fact that you were translating Agent O'Connor's
5 statements for the defendant slow down your conversation at
6 all?

7 A Yes. I should state that Agent O'Connor can say the
8 basic hello, my name is, but she does not speak Spanish
9 fluently.

10 Q She speaks about as well as I do?

11 A Again, I don't know how you do.

12 Q What did you discuss with the defendant at that time?

13 A I asked her what her name was, where she was coming from,
14 when she arrived.

15 Q Did you ask her any other questions?

16 A At that time there were several questions. I don't
17 recall all of them.

18 Q After you had spoken with the defendant for awhile, how
19 would you describe her demeanor?

20 A She calmed down.

21 Q Did there come a time when you asked the defendant for
22 permission to conduct a search of her room?

23 A Yes.

24 Q How long had you been speaking with the defendant at the
25 time you asked for her consent to search the room?

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1 A I don't know the exact amount of time. It was possibly
2 10, 15 minutes.

3 Q What was the defendant's reaction when you asked for
4 consent to search the room?

5 A She agreed.

6 Q Did she agree the first time you asked her?

7 A Yes, she agreed immediately.

8 Q Did she state anything else about the search process?

9 A She also stated that upon her arrival that morning at JFK
10 that she had been searched by Customs.

11 Q Why didn't you obtain a search warrant for the
12 defendant's bags at that time?

13 A Because she agreed, she consented to a search.

14 Q If she had not consented would you have asked for a
15 search warrant?

16 A Yes.

17 Q Is that standard DEA protocol?

18 A Yes.

19 Q Did you provide the defendant with a written consent to
20 search form?

21 A Yes.

22 Q What language was that form printed in?

23 A English.

24 Q Did you translate that document for the defendant?

25 A Yes.

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1 Q How much time did you spend translating the document for
2 the defendant?

3 A Just a couple of minutes.

4 Q After you translated the form to the defendant, did you
5 confirm with her that she understood it?

6 A Yes.

7 Q Can you please just explain for the court how you went
8 about doing so.

9 A I stood next to the defendant. I showed her the form. I
10 translated the first line and read it to her. I translated
11 the second line, read it to her, translated the third line,
12 read it to her; asked if she understood and asked her to sign
13 it.

14 Q And did the defendant in fact sign the consent to search
15 form?

16 A Yes.

17 MR. KAZEMI: Your Honor, may I approach?

18 THE COURT: Yes.

19 Q I'm showing you what has been marked for identification
20 as Government Exhibit 1.

21 Do you recognize this document?

22 A Yes.

23 Q Can you please tell the court what that document is.

24 A It is the DEA consent to search form.

25 Q And is that form signed?

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1 A Yes. It's signed by the defendant, myself, and Elizabeth
2 O'Connor.

3 Q What does the form say; can you please read the form to
4 the court.

5 A That I'm Norby Marin Moreno. I have been asked by the
6 officials if I will allow them to search my baggage and my
7 room. It says: I have not been threatened in any way and it
8 says: I give them permission to search.

9 MR. KAZEMI: Your Honor, I move to admit Government
10 Exhibit 1 into evidence.

11 THE COURT: All right.

12 Incidentally, I noticed in your papers you referred
13 to pedigree information. What do you contend in what I have
14 just heard is pedigree information, just the name?

15 Q Agent, did you ask the defendant her name?

16 A Yes.

17 Q Did you ask her nationality?

18 A Yes.

19 Q Did you ask her, her country of origin?

20 A Yes.

21 MR. KAZEMI: Your Honor, those are essentially the
22 pedigree questions.

23 THE COURT: That's it? Okay.

24 What's next?

25 Q What did you and the agents do after the defendant signed

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1 the consent to search form?

2 A After the consent to search form was signed, we searched
3 the room and started searching her belongings.

4 Q Did you threaten the defendant in any way in order to
5 obtain her signature?

6 A No.

7 Q Did you make her any promises in order to obtain her
8 signature?

9 A No.

10 Q And once she signed you began searching her belongings?

11 A Yes.

12 Q What did you search?

13 A We started searching the black suit case, the camouflage
14 suitcase, the red handbag, the brown purse and lime green
15 purse, and there were a few things scattered about the room on
16 some tables and nightstands.

17 Q Did the defendant confirmed that these were her
18 belongings?

19 A Yes.

20 Q During your search did you find a cell phone?

21 A Yes.

22 Q Did you ask the defendant any questions about the cell
23 phone?

24 A Yes.

25 Q What sort of questions did you ask the defendant?

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1 A I asked if it was her cell phone and when she had gotten
2 it --

3 THE COURT: You're saying this is pedigree
4 information?

5 MR. KAZEMI: No, your Honor. We're conceding
6 that --

7 THE COURT: I'm asking for the record. Right now
8 we're just dealing with probable cause.

9 Is there anything else that relates to probable
10 cause? If so, let me hear it.

11 MR. KAZEMI: I apologize, your Honor.

12 Q Did there come a time when you resumed searching the
13 defendant's bags?

14 A Yes.

15 Q What happened next?

16 A As we resumed searching -- as I resumed searching the
17 bags, Agent Samilo had discovered a metal cannister, a metal
18 perfume cannister concealed deep within one of the suitcases
19 wrapped in defendant's clothing. He pulled one out, looked at
20 it.

21 It was a perfume cannister. He took the lid off,
22 sprayed it, it was indeed perfume. He showed it to me. I
23 looked at it and we put it back on the bed and continued
24 searching.

25 He pulled out a second cannister, as I continued

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1 searching, in a separate bag. He pulled out a third
2 cannister, and by the time he pulled out the fourth cannister,
3 we both started examining them closely.

4 They were -- they appeared to be normal perfume
5 cannisters; however, they weren't weighted the way a liquid
6 should be weighted. They didn't slosh around a bit, but they
7 were heavy as if they were full.

8 At this time, as I started shaking them and
9 inspecting them, at this time the defendant stated that they
10 were not hers.

11 Q Did the defendant state that in response to a question?

12 A No.

13 Q She stated that on her own?

14 A Yes.

15 Q I'd like to show you what's been marked for
16 identification as Government Exhibit 7.

17 MR. KAZEMI: Yes, your Honor, your Honor, may I
18 approach?

19 THE COURT: Yes.

20 Q Do you recognize this photograph?

21 A Yes.

22 Q Please tell the court what that is a photograph of.

23 A This is a photograph of the four perfume cannisters that
24 were seized from the defendant's suitcase.

25 Q So those are the perfume cannisters that were removed

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1 from the defendant's luggage?

2 A Yes.

3 Q With the exception of the cannister lid at the bottom
4 left of that photograph, is that how the cannisters appeared
5 when they were removed from the defendant's luggage?

6 A Yes. When they were removed they were undamaged. The
7 damage you see there is what we did trying to open them to
8 find the hidden heroin.

9 Q And what happened after you removed the four cannisters?

10 A After we removed the four cannisters and I was able to
11 open the lid of one of the cannisters, we field tested it and
12 it was positive for heroin. We placed the defendant under
13 arrest and transported her for processing.

14 Q What did you do with the defendant's belongings at that
15 time?

16 A At that time we brought all the defendant's belongings
17 with us. They were taken to the New York Field Division.
18 They were inventoried as is the standard.

19 MR. KAZEMI: Your Honor, I'm sorry, I forget to
20 request that 7 be admitted into evidence.

21 THE COURT: All right.

22 (So marked.)

23 THE COURT: Received.

24 Q You said the belongings were inventoried at DEA
25 headquarters?

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1 A Yes.

2 Q Can you please describe the inventory process for the
3 court.

4 A We must go through everything in the property, every
5 pocket, every bag; pull everything out and make a list of what
6 everything is. We must inspect to make sure that there
7 isn't -- there aren't any other drugs or dangerous materials
8 inside the belongings.

9 They go into a safe vault where all nondrug exhibits
10 are stored and we can't have anything along the lines of
11 explosives or weapons or even other drug materials being
12 placed in a nondrug vault.

13 Q I'm showing you what has been marked for identification
14 as Government Exhibit 2. Do you recognize this document.

15 A Yes.

16 Q It's a five page document.

17 A That is the inventory report of defendant's property.

18 Q Did you create this inventory?

19 A Yes.

20 Q This is a full and accurate inventory of the defendant's
21 belongings?

22 A Yes.

23 Q Approximately how long did it take for you to create
24 this inventory?

25 A Few hours.

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1 Q Were the cannisters that you found in the defendant's
2 luggage also taken to DEA headquarters?

3 A Yes.

4 Q Were they subjected to further examination at that time?

5 A Yes, they were taken to our laboratory. That's the
6 laboratory, the laboratory for the Northeast Region.

7 MR. KAZEMI: Your Honor, I'd like to move Exhibit 2
8 in evidence.

9 THE COURT: All right. No objection, it will be
10 received.

11 (So marked.)

12 Q And Agent Aceves, I'd like to show you what have been
13 marked for identification as Government's Exhibits 8, 9 and
14 10.

15 A Okay.

16 Q Do you recognize Exhibit 8?

17 THE COURT: Can you put it on its side.

18 A Yes. This exhibit is again the same cannisters. Some
19 have been opened. As you see there, there's that sort of gold
20 color cannister, yellow colored cannister. Next to it is a
21 plastic wrapped chunk of heroin.

22 That's what was concealed inside each one of those
23 cannisters in the bottom portion. Next to that is a small
24 portion. That's what was at the very top of the cannister,
25 and the one you're pointing to -- the one in the middle of

Aceves - direct - Kazemi

1 those two smaller ones, that is the -- that is what was in the
2 lid. If you look, that might be in another picture.

3 THE COURT: What is the scale at the bottom?

4 THE WITNESS: I believe that is in inches, your
5 Honor.

6 Can you go to the next picture?

7 Q Sure. This is Exhibit 9.

8 A In this photograph you can see there, where the line is,
9 there is a small perfume bottle, I guess you could say, that
10 had perfume in it, so if any of the cannisters were tested
11 they would actually spray perfume.

12 Each one of them sprayed perfume, but you can see
13 it's only a very, very small amount of perfume that's in
14 there. The rest of it was all heroin.

15 Q And finally, this is Exhibit 10. Can you please the
16 court what that is.

17 A That again is one of the larger portions from the body of
18 the cannister, that was removed from one of the cannisters.

19 MR. KAZEMI: Your Honor, I move to admit 8, 9 and 10
20 into evidence.

21 THE COURT: All right. They will be received.

22 (So marked.)

23 Q And finally, Agent Aceves, I'd like to show you what's
24 been marked for identification as Government Exhibit 11. Do
25 you recognize this document?

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1 A Yes. This is a lab report from the heroin that was
2 submitted from the defendant's suitcase. As you see there,
3 it's a net weight of 1209 grams and it is a purity of 93.5
4 percent, which is extremely high and extremely pure.

5 Anything above 80 would be considered extremely good
6 quality heroin. This is almost -- I've never seen anything
7 above 80.

8 Q And do you recall, finally, what weight the Colombian
9 source, the wiretap indicated the defendant would be carrying
10 on her?

11 A We were told the defendant would have 1200 grams.

12 Q And this lab report indicates what weight?

13 A 1209.

14 MR. KAZEMI: Thank you. No further questions.

15 THE COURT: All right, Miss Harris, any
16 cross-examination?

17 MS. HARRIS: Yes, your Honor.

18 CROSS-EXAMINATION

19 BY MS. HARRIS:

20 Q Good afternoon, Agent. I want to talk to you about the
21 source information that you had in Colombia. You talked about
22 the investigation having multiple wiretaps; correct?

23 A Yes.

24 Q And the agent -- excuse me, withdrawn. The investigation
25 also relied on other sources of information; correct?

Aceves - cross - Harris

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1 A I stated that the source of information was the wiretaps.

2 Q But putting aside Miss Marin Moreno's case in particular,
3 in general, in the course of this investigation, there were
4 other pieces of evidence that the investigation had
5 discovered, correct?

6 MR. KAZEMI: Objection, your Honor. The source is
7 only relevant to Miss Marin Moreno's case.

8 THE COURT: Overruled.

9 A Sorry. Could you restate the question.

10 Q In the course of this investigation -- the investigation
11 had yielded additional pieces of evidence; correct?

12 A Are you referring to the seizures that were made that I
13 mentioned earlier, the 35 kilos, the 8, the 5 kilos and the 6
14 kilos.

15 Q I'm not referring to the seizures. I'm asking you
16 generally, agent -- withdrawn. Let me start again.

17 You referred to this investigation being under a
18 single case number, correct?

19 A Yes.

20 Q And that case number involved several different wiretaps;
21 correct?

22 A Correct.

23 Q And it's an investigation into a particular drug
24 organization in Colombia, correct?

25 A Correct.

Aceves - cross - Harris

1 THE COURT: Excuse me just a moment.

2 Do you know or were you told by this DEA agent in
3 Colombia with whom you spoke about the defendant whose phone
4 was being tapped? Were you told anything about the individual
5 whose phone was being tapped?

6 THE WITNESS: Yes. At the time -- yes, but I don't
7 recall now. They have been up and down on several phones
8 since then. I can't tell you how many, but it's several
9 phones.

10 THE COURT: You can't say who was overheard by the
11 agent or how he fit into their investigation or otherwise?

12 THE WITNESS: I don't recall. I don't have that
13 name right now, your Honor. I know some of the principal
14 targets and I could --

15 THE COURT: But you can't say --

16 THE WITNESS: I can't say which one specifically.

17 THE COURT: All right. I think we better find out
18 more about that other sources.

19 Go ahead, Miss Harris.

20 Q My last question -- withdrawn.

21 So this single investigation, or a single
22 investigation number, case number, did it also use informants?

23 A Not to my knowledge. The only information I received
24 thus far has been regarding the wiretaps, and on my end in New
25 York, I conducted my investigation with the defendant.

Aceves - cross - Harris

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1 The agents in Colombia have their investigation.
2 They follow their leads where they take them. When they have
3 information that crossed their paths, would cross the path of
4 the New York investigation, with my end of the same
5 investigation, they contact me say, okay, we have more New
6 York information on this investigation. So --

7 Q I'm sorry. Continue.

8 A That's fine.

9 Q Was this the first time that you had received information
10 concerning a New York connection, from Agent Walsh, in
11 connection with this case number?

12 A I had been in contact with him prior to July 31st in sort
13 of more or less a briefing of this investigation, that they
14 had started an investigation with ties to New York and for us
15 to start our end of the investigation. So I had spoken to him
16 about this investigation prior to July 31st.

17 THE COURT: The case number that you're talking
18 about is that a number assigned by the Colombian authorities
19 or by the DEA or --

20 THE WITNESS: My case number, your Honor, is
21 assigned by the New York Field Division. Richard Walsh has a
22 case number assigned by the Bogota --

23 THE COURT: When you say that the wiretaps were in a
24 specific case number, is that a case number given by the
25 Colombian authorities or by your office?

Aceves - cross - Harris

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1 THE WITNESS: Both, your Honor. There are three
2 case numbers right now; there is my case number in New York,
3 there's the Bogota DEA office case number, and there's the
4 Colombian National Police case number. All three of them are
5 linked.

6 THE COURT: All three of them relate to this wiretap
7 order and the wiretaps that have been placed pursuant to the
8 order?

9 THE WITNESS: Yes, your Honor.

10 THE COURT: I assume the numbers are different for
11 each agency and don't necessarily contain the same
12 information?

13 THE WITNESS: The numbers will be different. For
14 example, the numbers in New York start with a C-1. The
15 numbers in Bogota start with a Z, the letter Z. However, they
16 all -- for example, on my reports, I have to connect my case
17 to their cases because they are all under the same
18 investigation.

19 THE COURT: Go ahead.

20 Q You said there were multiple wiretaps. More than five
21 wiretaps?

22 A At that time, I don't think so. Between now and then,
23 definitely.

24 Q Sorry. When you say between now and then, what time
25 period are you talking about?

Aceves - cross - Harris

1 A July 31st, the date of the defendant's arrest. At that
2 time I don't know exactly how many were up at that time. I
3 know it was more than one. Between July 31st and now, there
4 have been definitely more than five.

5 Q Do you know the number --

6 A No.

7 Q -- of wiretaps?

8 A No.

9 THE COURT: Had you received information previously
10 from this DEA agent in Colombia, from the same wiretap that
11 you got the information concerning the defendant from or not?

12 THE WITNESS: No, your Honor. This was -- this
13 investigation had just begun. It had literally -- the phones
14 in Colombia had just begun to be intercepted. The
15 investigation had just begun.

16 THE COURT: This is the first time you'd gotten
17 information from this particular wiretap?

18 THE WITNESS: Correct.

19 THE COURT: Okay. Go ahead, what's next?

20 Q I'm sorry. I'm asking you now about the time period
21 preceding July 31st. This investigation had been proceeding,
22 correct, prior to July 31st?

23 A Yes, this investigation was started before July 31st.

24 Q Do you know when it started?

25 A I don't know exactly the start date.

Aceves - cross - Harris

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1 Q More than six months prior?

2 A I don't think so.

3 Q And there were multiple wiretaps prior to July 31st;
4 correct?

5 A I couldn't say.

6 Q You said a moment ago that there were multiple phones
7 that had been picked up and dropped, correct?

8 A Correct.

9 Q So there had been different wiretap orders; correct?

10 A Yes. But we were talking about time periods. I don't
11 know if you are specifically asking --

12 THE COURT: What we're interested in is, prior to
13 the phone call in which you got this information had there
14 been a number of wiretap orders?

15 THE WITNESS: At the time of July 31st, I know there
16 was more than one phone.

17 Q Were you --

18 THE COURT: Had you gotten information from any of
19 those phones before the 31st or not?

20 THE WITNESS: The only information I'd received was
21 that Special Agent Walsh had started an investigation
22 targeting a source of supply in Cali, Colombia where they were
23 transporting heroin and cocaine from Colombia through Panama,
24 to Guatemala into Mexico, via Texas to New York and that he
25 would be getting me more information soon once the phone taps

Aceves - cross - Harris

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1 revealed more information.

2 So prior to July 31st, that's the information I had,
3 that information would be --

4 THE COURT: So none of that information, so far as
5 you were aware, had been acquired through a phone tap?

6 THE WITNESS: That information, as I'd been told,
7 was -- honestly, I don't know if that was from the wiretap or
8 from the background investigation they had done on this
9 organization.

10 THE COURT: All right. Go ahead.

11 BY MS. HARRIS:

12 Q You just described to the judge a general briefing about
13 the goals of the investigation; correct?

14 A What I just described was what they believed this
15 organization was doing.

16 Q But you had never before July 31st received any specific
17 tips concerning an illegal drug transaction that takes place
18 in New York; correct?

19 A Regarding this investigation? No.

20 Q And you had never received prior to the morning of
21 July 31st any specific information about Miss Marin Moreno;
22 correct?

23 A Prior to July 31st, no.

24 Q Now, fair to say that whenever a phone is being
25 wiretapped there are multiple voices being picked up; correct?

Aceves - cross - Harris

1 A Usually the target, the target who is in possession of
2 the cell phone, and whoever he or she is speaking with.

3 Q But cell-phones can be passed to other people, correct?

4 A Yes. However, drug traffickers tend to not do that as
5 often unless they are finished with the phone.

6 Q Now, you weren't aware on July 31st who was speaking on
7 the wiretap at issue; correct?

8 A At this time I can't tell you. I can get that
9 information for you, but at this time I don't know it.

10 Q Now, you said during direct that there were multiple
11 calls that Agent Walsh overheard; is that correct?

12 A Yes.

13 Q And you don't know whether those --

14 THE COURT: This is prior to speaking to you, you
15 heard multiple calls or just one call?

16 THE WITNESS: Agent Walsh heard multiple calls on
17 the same line on July 31st. As the calls came in, he called
18 me to tell me what was happening.

19 For example, the first call I received was, There's
20 a courier in New York. She's in a hotel in Queens. I'll call
21 you back with more information.

22 Agent Walsh heard another phone call. He called me
23 back with more information: A heavysset Hispanic woman. Her
24 name is Norby. She should be at the Metro Hotel. I'll call
25 you back when I get more information.

Aceves - cross - Harris

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1 Agent Walsh called me again at a later time to pass
2 more information until I had all the specifics. As he was
3 listening to calls coming in on the same line -- I don't know
4 what the target of that line is, he can find out for me -- he
5 was relaying the information to me.

6 Q And approximately how many phone calls then did you have
7 with Agent Walsh before your information that you conveyed to
8 us was complete?

9 A There were so many phone calls between Agent Walsh and I
10 that day that I'd have to look at my phone records to tell
11 you.

12 Q And these phone calls took place at approximately
13 10:00 a.m. on July 31st?

14 A Starting at 10:00 a.m. I believe he actually might have
15 called me before 10:00 a.m. I did not get his phone call. I
16 actually didn't speak with him until approximately a little
17 after 10:00 a.m.

18 Q He initially called you for the first time that morning,
19 correct?

20 A Correct.

21 Q Did you take notes during the phone calls?

22 A I believe I did take some notes in my red notebook.

23 Q And Agent Walsh didn't tell you to whom -- withdrawn.

24 Agent Walsh didn't tell you whether he was picking
25 up the same voices on each of the multiple calls; correct?

Aceves - cross - Harris

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1 A That morning he did not tell me if it was the same voice.
2 That was the detail that was not mentioned. However, since
3 then, speaking with him, he has stated that it was the same --
4 I'm going by what Agent Walsh has told me. He's told me that
5 it was the same person on that line that day.

6 Q Well, each phone call obviously has two individuals;
7 correct?

8 A Correct. I don't know if each time he was speaking to a
9 different individual. It may be so. You would have to ask
10 Agent Walsh. But it's possible that he could have -- one
11 conversation was between the target and one contact and
12 another conversation was between the target and another
13 contact. I know that he gave us enough information for us to
14 find the defendant.

15 Q And you don't know the context of each phone
16 conversation, correct?

17 A I was only given the pertinent information.

18 Q You didn't hear what one individual said to the other;
19 correct?

20 A Again, I just received the pertinent information. I
21 didn't listen to the phone calls.

22 Q You discussed on direct some seizures that had been made
23 in connection with this investigation. There was a seizure of
24 drugs from a car and an arrest of an individual named Luis
25 Gonzales; correct?

Aceves - cross - Harris

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1 A Yes.

2 Q When was that?

3 A That was on September 1st.

4 Q September 1st of 2008?

5 A Yes.

6 Q So that's after the arrest --

7 A Yes.

8 Q -- in this case?

9 And there were five kilos seized in the Cali
10 Airport. When was that?

11 A That was October 10th.

12 Q Again, 2008?

13 A Yes.

14 Q That was after the arrest in this case, correct?

15 A Yes.

16 Q And there was a third seizure; correct?

17 A October 16th.

18 Q And all -- again, 2008?

19 A Yes.

20 Q Are you aware of any seizures of drugs that resulted from
21 this wiretap investigation prior to July 31, 2008?

22 A No. As I stated, that was the very beginning of this
23 investigation. She was the first.

24 Q I'm a little confused, I'm sorry. A moment ago you said
25 that prior to July 31st there had been other wiretaps up and

Aceves - cross - Harris

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1 running; correct?

2 A Prior to -- a phone tap will last for a set period of
3 time. So that phone -- I don't know when it started, if it
4 started on July 15th and been up for 15, 16 days before
5 July 31st, so prior to July 31st there had been a phone tap.

6 Had there been phone taps not including that 30-day
7 period before that, say May and June, I believe not. But were
8 phones being listened to prior to July 31st, yes. Were they
9 being listened to back in May and April? I don't believe so,
10 but I'd have to check with Agent Walsh. I do not believe it
11 went that far back.

12 When we received information prior to July 31st
13 about an organization that was going to be bringing narcotics
14 to New York, it was just before July 31st. The information
15 regarding the defendant was the very first information to come
16 across the phone. The phones had not been up very long. But
17 had they been up prior to July 31st? Yes. Was it five days,
18 was it 15? I don't know at this time.

19 Q Well, let me ask you this. There are a number of
20 different targets of this drug organization, correct?

21 A Yes.

22 Q And they used and dropped phones with a fair degree of
23 speed; correct?

24 A Yes.

25 Q So when you're talking about being up on the phones 10 or

Aceves - cross - Harris

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1 15 days prior to July 31st, you're talking about being up on
2 this target's particular phone; correct?

3 A The phone that the information was given on?

4 Q Correct.

5 A Yes. So I don't know how many days before July 31st that
6 phone had been -- another target of the investigation, maybe
7 his phone had lasted since July 10th, that's possible, but
8 none of the phones in this investigation were back in -- I
9 don't believe May or April.

10 I believe that everything started in July. It may
11 have been June with some of the preliminary investigation, but
12 I believe the bulk of it started sometime in July. Agent
13 Walsh would be able to give you the specifics.

14 Q And let's talk about these seizures then, the drugs
15 seized from Mr. Gonzales' car in September.

16 You have no knowledge one way or the other whether
17 or not the information for that seizure came from the same
18 phone that you got the information about Miss Moreno, correct?

19 A At this time I don't know.

20 Q The same applies to the second seizure related to Mr.
21 Valasco, correct?

22 A Correct.

23 Q Again, with respect to the third seizure in Buenaventura,
24 Colombia, you don't know whether that seizure resulted from
25 the same phone wiretap that you received the information from

Aceves - cross - Harris

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1 Miss Marin Moreno, correct?

2 A Correct.

3 Q You got a fair bit of detailed information, correct?

4 A Yes.

5 Q You got the exact motel room number; correct?

6 A Yes.

7 Q You got the exact amount of drugs; correct?

8 A Yes.

9 Q And a physical description of Miss Marin Moreno; correct?

10 A Yes.

11 Q Fair to say it's unusual that tips are that detailed;
12 correct?

13 A I believe that the tips for the following seizures were
14 possibly as detailed, I don't know, but I believe the
15 information from the phones for those was rather detailed,
16 since finding a seizure like -- in vehicles is sometimes even
17 more difficult.

18 Q But you didn't receive those tips; correct?

19 A No.

20 Q So do you have personal knowledge as to the contents of
21 those tips?

22 A At this time, no.

23 Q When you received -- withdrawn.

24 You didn't receive any other information about the
25 woman who supposedly had drugs at the Hotel Metro; correct?

Aceves - cross - Harris

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1 A I'm sorry, can you repeat that.

2 Q Let me rephrase it. We talked about what you learned
3 from Agent Walsh, correct?

4 A Correct.

5 Q Other than what you testified to so far, you didn't learn
6 anything else in those conversations concerning Miss Marin
7 Moreno, correct?

8 A The only information I had came from Agent Walsh.

9 Q And other than what you testified to here today, you
10 didn't learn any additional information, correct, on
11 July 31st?

12 A Again, the only information I received on July 31st was
13 from Special Agent Walsh.

14 Q There is nothing in those phone calls that led you to
15 believe that she was armed, correct?

16 A Correct.

17 Q And, in fact, your information was that she was allegedly
18 a low-level drug courier; correct?

19 A Correct.

20 Q And in your experience as a DEA agent, couriers don't
21 typically carry weapons, correct?

22 A That's incorrect. A courier can be armed. Couriers
23 are -- they are possibly protecting a very valuable load.
24 There is no standard that couriers would be unarmed.

25 Q Let me ask you this. Couriers coming in through

Aceves - cross - Harris

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1 international -- traveling internationally by airplane?

2 A A courier coming in by airplane most likely is unarmed
3 coming off the plane.

4 If we had grabbed -- if we had come across the
5 defendant in the airport, then it would be more likely that
6 she would be unarmed, but the flight arrived that morning and
7 she could have had time, anytime between that morning and noon
8 or 1 o'clock, to obtain a weapon.

9 Q How did you know what time she had arrived?

10 A We were told that she was already there. So when I
11 received the phone calls at 10, I knew she was -- I had been
12 told that she was already there.

13 Q Were you told what time she'd arrived at?

14 A No. She have enough time to get from JFK to Queens
15 Boulevard. Anywhere along the line she could have already
16 gotten rid of the drugs or even had time to obtain a weapon.

17 Q Let's talk about when you arrived at the Hotel Metro.
18 You arrived at 12:00 p.m.; correct?

19 A Approximately 12:00 p.m.

20 Q And you arrived with other agents, correct?

21 A Yes.

22 Q Six agents in total; correct?

23 A Six or 7. I don't remember an exact number.

24 Q And all of the agents arrived at roughly at the same
25 time; correct?

Aceves - cross - Harris

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1 A No.

2 Q Who did you arrive with?

3 A I was first to arrive.

4 Q Did you have a partner in your car?

5 A No. I was the first to arrive. Then I believe Agent
6 Samilo arrived, and one by one the other agents arrived.

7 The supervisor at the time, Elizabeth O'Connor, she
8 arrived. John Francola -- the other agents I named, they all
9 arrived one by one. It's not as though we all tried to meet
10 at the exact same time.

11 Q How long did it take for all the agents to get to the
12 hotel?

13 A I believe that by approximately 12:30 everyone was in
14 position.

15 Q When you arrived at the hotel, did someone confirm with
16 the reception that indeed someone was in Room 166?

17 A I'm sorry, at what point, when I arrived or when everyone
18 arrived?

19 Q At any point in time when you arrived before you saw Miss
20 Marin Moreno --

21 A As agents were arriving. I said everyone arrived around
22 by 12:30, by 12:30, roughly around that time, I had seen the
23 defendant walk into the room so there wasn't a need to go
24 confirm whether somebody was in that room or not. I just saw
25 a heavysset Hispanic woman walk into the room.

Aceves - cross - Harris

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1 Q My question is, before you actually saw someone walk into
2 the room, did anyone make efforts to confirm that the room was
3 indeed occupied?

4 A I did not and I don't know if somebody else did.

5 Q Did you -- there's a window, correct, that looks out into
6 the parking lot from Room 166?

7 A Yes.

8 Q Did you, as you drove past -- withdrawn.

9 As you went past the window, did you look into the
10 room?

11 A The shade was drawn, as I recall.

12 Q Can you tell me the location of each of the agents in the
13 surveillance team?

14 A I can't tell you exactly who was where, but we formed a
15 perimeter around Room 166.

16 Q Can you describe that perimeter?

17 A There were agents on Queens Boulevard, there were agents,
18 including myself, in that vehicle facing Room 166. There were
19 agents in the gravel parking lot next to the rooms, and there
20 was an agent in the inner corridor.

21 Q And they were all in those positions by 12:30; correct?

22 A I don't know if it was exactly 12:30 that they were all
23 in position. I know around 12:30 everyone had arrived. It
24 probably took us a little longer to shuffle people around and
25 get them in position.

Aceves - cross - Harris

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1 Q Perhaps 5 or 10 minutes; correct?

2 A I couldn't say.

3 Q Less than 15 minutes?

4 A Possibly.

5 Q I'm going to show you Government Exhibit 5. You see the
6 white building towards the back of the driveway?

7 A Yes. That's part of the hotel.

8 Q And you see there's a door there; correct?

9 A The door for the driveway or the door with the small
10 awning almost in the shadows?

11 Q The door with the small awning.

12 A Yes.

13 Q That door opened into the interior hallway, correct?

14 A Yes.

15 Q Now I want to show you Government Exhibit 6.

16 To get to the doorway we just discussed in
17 Government Exhibit 5, you would have to go slightly to your
18 right; correct?

19 A To the right of this picture and down another corridor.

20 Q A fairly short corridor, correct?

21 A Relative to this corridor.

22 Q And is there a door at the far end of this corridor?

23 A Yes.

24 Q And those are the only two doors at the interior
25 corridor, correct?

Aceves - cross - Harris

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1 A Beyond that small door that we initially were speaking
2 about, there's all -- the corridor continues and goes down and
3 I don't know where it goes to beyond that. I don't know if
4 there's another exit that way.

5 Q You're talking about another possible exit behind the
6 door here?

7 A Possibly there or to the right. When you enter that door
8 from the outside, to get to here you have to take a right. If
9 you go to the left, there's a hallway that goes that way.

10 I don't know what goes that way. If you go back one
11 picture it will make sense. Through this door here, if you go
12 to the right you will see the corridor where we are taking the
13 picture from, looking at that picture. However, if you go to
14 the left, I don't know what goes that way.

15 Q Immediately to the left is the breezeway; correct?

16 A No. As you can see, there's a window open there as if
17 there's another office there. I don't know if that opens up
18 to an office. That might have a door to Queens Boulevard or
19 to other places. Alls I know is it does go to the left as
20 well.

21 Q I'm sorry. That window is to the right of the door;
22 correct?

23 A This window here? It is to the left.

24 Q I'm sorry. I'll leave that up.

25 A It looks like there's a window with a slant open like

Aceves - cross - Harris

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1 that right here under this awning. If not, I don't know what
2 that awning is covering.

3 Q I'm sorry, I was confused. I thought we indicated that
4 was a door and then the awning?

5 A This is the door. This is the door to enter and go to
6 the right. There are the rooms or offices, I don't know what,
7 in this portion.

8 There's another window up here and there, so when
9 you go in, you can go to the left from this door, this is
10 where the door is.

11 Q So there are two doors then that you can see at the end
12 that have driveway, correct?

13 A There's a door on the right and a window of some sort on
14 the left and then there's the breezeway.

15 Q And any other door that might exist would be facing
16 Queens Boulevard, correct?

17 A Correct.

18 Q Where you had agents stationed; correct?

19 A Correct.

20 Q You said that a maid knocked on the exterior door of 166?

21 A Yes.

22 Q Can you describe that maid for me, please.

23 A It was a female. Other than the fact that she was
24 average in size and dark long hair, that's all I remember.

25 Q Was she white?

Aceves - cross - Harris

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1 A I don't recall. I believe she wasn't, but I can't say
2 with certainty.

3 Q Did she speak Spanish?

4 A I did not speak with her. The interaction -- I never had
5 interaction with the maid so I don't know what happened
6 between Agent O'Connor and the cleaning lady.

7 Q You say she had long dark hair?

8 A I remember her having dark hair and maybe being -- I
9 can't even guess as to age. Agent O'Connor was handling that
10 and I just left it to her. I never spoke with her or was
11 close to her at any point. My attention was never focused on
12 her. She left immediately.

13 Q You were approximately 10 or 15 feet from the entrance to
14 Room 166, correct?

15 A At the time the maid was there, my eyes were focused on
16 166.

17 Q The maid was directly in front of Room 166; correct?

18 A At the moment the maid was at 166, and I was gathering my
19 things to exit the van and run to that door.

20 Q You say she had dark hair. It was it longer than her
21 shoulders?

22 A I don't recall.

23 Q You said that all three of you approached room 166;
24 correct?

25 A Agent O'Connor approached the door first with the

Aceves - cross - Harris

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1 cleaning lady and then Agent Samilo and myself approached when
2 the door is knocked on.

3 Q Was Agent Samilo directly behind Agent O'Connor?

4 A By the time she was entering the room -- as I recall, by
5 the time she was entering the room, he was entering behind her
6 and then I entered behind him.

7 Q The cleaning lady just stepped inside as you entered the
8 room?

9 A Yes. At no point during that would I have looked at the
10 cleaning lady because now my focus is on what's in that room
11 and is there anything dangerous in that room.

12 Q This was a summer day, correct?

13 A Yes.

14 Q Relatively warm?

15 A I don't remember it being cold. On July 31st, I assume
16 it's a nice day.

17 Q And you said that Miss Marin Moreno had one or two deli
18 bags with her, correct?

19 A Correct.

20 Q Smaller than -- containing items smaller than a loaf of
21 bread, correct?

22 A Correct.

23 Q And you say she stepped outside; correct?

24 A Correct. She stepped outside -- it's almost as if it
25 were one fluid act. She stepped in, she stepped out, looked

Aceves - cross - Harris

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1 around, stepped in, stepped around and looked around.

2 It wasn't -- it was one continuous sort of motion.
3 There weren't very long pauses. It only took a few seconds,
4 the entire thing.

5 Q Less than five seconds?

6 A No more than ten.

7 Q She just looked in that parking lot; correct?

8 A She looked up towards the breezeway, down towards the
9 parking lot, up towards the breezeway. She did that back and
10 forth.

11 Q Now, you talked about witnessing a struggle with Miss
12 Marin Moreno. Agents were never overwhelmed by Miss Marin
13 Moreno's force, correct?

14 A When I entered the room, I saw Agent O'Connor struggling
15 with the defendant. Defendant is heavysset, has a low center
16 of gravity, is much shorter than Agent O'Connor and it would
17 be easy for her to use that to her advantage.

18 Q Miss Marin Moreno wasn't armed; correct?

19 A We did not find any weapons.

20 Q And but Agent O'Connor had a weapon, correct?

21 A Yes.

22 Q You say that Miss Marin Moreno started to close the door,
23 correct?

24 A Correct.

25 Q And at that point Agent O'Connor pushed the door open,

Aceves - cross - Harris

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1 correct?

2 A Correct.

3 Q She drew her weapon; correct?

4 A I don't recall whether Agent O'Connor's weapon was drawn
5 or not.

6 Q Well, then Agent Samilo entered behind her, correct?

7 A Yes.

8 Q And he drew his weapon, correct?

9 A I don't recall whether his weapon was drawn or not.

10 Q Let's talk about you then.

11 A I entered the room. Two agents are struggling with the
12 defendant. I enter the room. I hope that they have that
13 under control, and I continued to do a security sweep through
14 the rest of the room with my weapon drawn, making sure that
15 nobody else was in that room and there are no dangers to us.
16 Immediately after doing so, I reholstered and snapped my gun
17 into its holster.

18 Q When you did this security sweep, you lifted up items?

19 A I came in. I went into the bathroom. I looked in the
20 bathroom, moved the screen, made sure no one is in the shower.
21 Opened the closet door, looked under the bed.

22 Q You lifted up the cushions on the couch?

23 A I don't think anybody would be that small.

24 Q I'm going to show you what I'm going to mark for
25 identification as Defense Exhibit A.

Aceves - cross - Harris

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1 I realize you may not be able to see the number on
2 the doors there. Is this a fair and accurate description of
3 the interior of Room 166?

4 A It looks like it could be a room at that motel.

5 Q With the door exiting onto the parking lot, correct?

6 A Correct.

7 MS. HARRIS: I move for the introduction of Defense
8 Exhibit A.

9 MR. KAZEMI: No objection, your Honor.

10 THE COURT: All right.

11 (So marked.)

12 Q I'd like to show you what I'm going to mark for
13 identification as Defense Exhibit B.

14 THE COURT: Let's take a brief recess and start
15 again shortly:

16 (Continued next page)

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Aceves - cross/ Harris

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1 (Court resumed)

2 THE COURT: Have a seat.

3 S A L V A D O R A C E V E S, resumed the stand and testified
4 further as follows :

5 THE COURT: Have a seat. We will just keep going.
6 If we are unable to finish this evening, counsel and the
7 witness is available tomorrow morning?

8 MS. HARRIS: About 10:30 I am.

9 MR. KAZEMI: I am available any time, Your Honor.

10 THE COURT: Okay. Have a seat and we will keep
11 going. Go ahead.

12 CROSS-EXAMINATION .

13 BY MS. HARRIS:

14 Q Before I resume asking you about the photograph, I just
15 want to go back a step or two. By the time Ms. Marin Moreno
16 arrived into the parking lot, agents, for the most part, were
17 in position, correct?

18 A I think I said by around 12:30, which was around the time
19 she arrived, that agents were still arriving and should have
20 arrived by then, and that it took some time after that to
21 create a perimeter around the hotel. I believe that's what I
22 had said.

23 Q You said ten or 15 minutes?

24 A I said ten or 15 minutes.

25 I said I couldn't say exactly. Possibly it could

1 have taken that long. It took us a while to look through all
2 the areas. Eventually the corridor was discovered. I don't
3 know how long it took for that. That was a while later, but we
4 did position people around there. I -- I said I couldn't
5 possibly say exactly how long it took. It was sort of a fluid
6 constant thing as, you know, people were coming. You posted
7 another person. You post there and then once we had people in
8 position people started moving around and searching until the
9 inner corridor was discovered.

10 Q I believe you testified on direct that about ten or
11 15 minutes after the inner door was discovered it was arranged
12 for the maid to knock on the exterior door room 166; is that
13 correct?

14 A After the interior door was discovered I'm not sure how
15 much time had passed between the interior door being
16 discovered and us knocking on the door.

17 Q But several minutes, fair to say, several minutes had
18 passed?

19 A I don't recall.

20 I do recall after the interior door was discovered
21 we realized that we wanted to move quicker because the
22 transaction could have already taken place, and the recipient
23 could have already been inside with the defendant.

24 Q Let's talk about the interior of the room. I'm going to
25 show you what's been -- I think I had already started to

1 present this before we broke, it was been marked for
2 identification Defendant's Exhibit B.

3 There was a single bed in room 166, correct?

4 A I believe there -- I recall there being at least one bed.

5 Q Is this a fair and accurate description of room 166?

6 A I can't say with certainty that this is room 166 but it
7 was similar.

8 MS. HARRIS: Your Honor, I move for the introduction
9 of Defense Exhibit B.

10 MR. KAZEMI: No objection.

11 THE COURT: There being no objection, it will be
12 received.

13 (Defense Exhibit B received and marked in evidence)

14 Q I'm going to show you what I am going to mark for
15 identification Defendant's Exhibit C.

16 THE COURT: These are, for some reason, not very
17 clear. There we go. That's better.

18 MS. HARRIS: Sorry about that.

19 Q Is this the exterior of room 166?

20 A I can't -- it's blurred. The numbers are a little
21 blurred, so I can't see. There you go. That looks like 166
22 of the hotel. Since I can't see the rest I can't say with
23 certainty that is, in fact, the hotel.

24 MS. HARRIS: I move the introduction of Defense
25 Exhibit C.

Aceves - cross/ Harris

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1 THE COURT: There being no objection, it will be
2 received.

3 MS. HARRIS: No objection. Your Honor.

4 (Defendant Exhibit C received and marked in
5 evidence)

6 Q You testified previously, you, Agent Samilo and
7 Agent O'Connor entered the room, correct?

8 A Yes.

9 Q And when you entered the room Ms. Moreno was cuffed,
10 correct?

11 A When we entered the room we eventually cuffed her, yes.

12 Q And you identified yourself as being with the DEA,
13 correct?

14 A Correct.

15 Q And at that point she was calmed down, correct?

16 A I don't know if that calmed her down. At some point she
17 was calmed down, and at some point it was distinguished
18 between police and DEA.

19 THE COURT: I am sorry. At one point what?

20 THE WITNESS: At one point she -- defendant began to
21 calm down and when we were fully identified as DEA. I don't
22 know what point that took place.

23 Q Then she was placed on the bed, correct?

24 A I don't recall exactly where she was placed. I believe
25 she might have sat in the chair, maybe edge of the bed, but I

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1 was -- Ms. O'Connor, being a female, she was the one handling
2 her.

3 Q Was she cuffed in front or in back?

4 A She was cuffed in back.

5 THE COURT: Excuse me.

6 How were you dressed during this operation?

7 THE WITNESS: I believe I had on -- I think I was
8 probably wearing blue-jeans and some sort of short sleeve
9 shirt and my bullet proof vest.

10 THE COURT: Did you have any shield or
11 identification?

12 THE WITNESS: DEA badge.

13 THE COURT: How was that displayed?

14 THE WITNESS: At that time it was displayed on my
15 hip, I believe.

16 THE COURT: Did you, as you entered, did you say
17 anything?

18 THE WITNESS: I heard the agents entering before me
19 say police. They were the ones making contact with the her. I
20 entered and the security did a security sweep of the room.
21 Once they had identified themselves and made contact with her,
22 it was then my job to ensure their safety and security.

23 THE COURT: And was the word police said in English
24 or in Spanish, or both?

25 THE WITNESS: I don't recall.

Aceves - cross/ Harris

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1 THE COURT: Okay.

2 THE WITNESS: The translation for police in Spanish
3 is policia and it's almost identical, and I would say that
4 almost any Spanish speaker would hear the word police and know
5 that it means policia.

6 THE COURT: Go ahead.

7 Q And the bullet proof vest you were wearing was over your
8 shirt, correct?

9 A Correct.

10 Q And were the other agents wearing bullet proof vests as
11 well?

12 A I did not touch to see if each of them were. I assume
13 they were.

14 Q Visible?

15 A I don't recall. We have some vests that fit under our
16 clothing. I recall seeing agents with their vests on. I don't
17 know. I would assume so. You always try to be as safe as
18 possible, so I would say, yes, they had them on. I don't
19 recall seeing them.

20 THE COURT: Could you tell who were the agents who
21 attracted this woman's attention when she looked from the
22 hotel maid to the people who were standing there?

23 Was that you that she noticed or --

24 THE WITNESS: No, she noticed Special Agent
25 Elizabeth O'Connor who was standing next to the cleaning lady.

Aceves - cross/ Harris

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1 THE COURT: And what, if anything, was remarkable
2 about her? Why would she draw anybody's attention?

3 THE WITNESS: At that point I don't know. I believe
4 --

5 THE COURT: For example, did she have a bullet proof
6 vest or shield around her neck?

7 THE WITNESS: Yes.

8 THE COURT: Or --

9 THE WITNESS: I know that Special Agent Elizabeth
10 O'Connor had a bullet proof vest with "police" across the
11 chest, and I believe she was wearing it.

12 THE COURT: And what's the color of the vest?

13 THE WITNESS: Blue with gold lettering.

14 THE COURT: So "police" -- words "police" would be
15 in gold and that would be the dark blue or black?

16 THE WITNESS: Correct.

17 THE COURT: Okay.

18 Q I'm sorry, Agent. Just before this line of questioning
19 from the Judge I had asked you whether you remembered what
20 kind of bullet proof vest the agents were wearing, correct?

21 A I stated I did not know exactly who was wearing what. I
22 stated that I know she has one and I believe she was wearing
23 it.

24 Q Well, when I asked you, you said there were kinds of
25 vests that people have -- that agents had that they wore

Aceves - cross/ Harris

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1 underneath their clothes, correct?

2 A Correct.

3 Other agents might have had time to put them
4 underneath their shirts. I did not. That's why mine was over
5 my shirt and I believe Elizabeth O'Connor did not as well.
6 That's why hers would have been over her shirt as well.

7 THE COURT: Where, if you know, where did she come
8 from?

9 Was she in the car conducting surveillance with you
10 or was she in another vehicle or do you know?

11 THE WITNESS: Special Agent O'Connor?

12 THE COURT: Yes.

13 THE WITNESS: She was in the van with us just prior
14 to this. Going back to those photos, she was in the
15 surveillance van parked across from 166.

16 THE COURT: All right. Go ahead.

17 Q I'm sorry.

18 When we are -- when I was asking you questions about
19 the description of the maid you had indicated that you were --
20 when the maid knocked on the door you were in your van getting
21 your things together, correct?

22 A I was enroute. When she was approached by Special Agent
23 O'Connor I was in the van. When they moved to the door to
24 knock I was in transition from the van to the door. So as the
25 door is knocked, the door is opening, I'm getting out of the

Aceves - cross/ Harris

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1 van, I'm running to the door, but when I get to the door
2 Special Agent O'Connor is coming in and Agent Samilo is going
3 in and I'm behind them.

4 Q Let me show you again Government Exhibit Exhibit Five. I
5 think you testified on direct that -- I'm sorry -- let me make
6 sure I'm showing the whole exhibit. Here we are -- that your
7 surveillance van was parked, approximately, this distance --
8 the distance from the photographer to the tip --

9 A -- correct --

10 Q -- of the red van, correct?

11 A Correct.

12 Q Your testimony is that as the doors opened you're running
13 full speed towards the hotel room door, correct?

14 A I'd say I am moving quickly from the van in the direction
15 of the door.

16 Q And is it fair to say that this is about 20, 25 feet,
17 correct?

18 A Approximately.

19 Q And Agent Samilo is already ahead of you, correct?

20 A Correct.

21 Q Directly behind Agent O'Connor?

22 A Agent Samilo was behind Agent O'Connor as she entered. I
23 don't believe Agent Samilo was at the door as it was opened.

24 Q Where was Agent O'Connor when the door was opened?

25 A Agent O'Connor was right next to the maid when the door

Aceves - cross/ Harris

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1 was opened.

2 Q And do you remember where Agent Samilo was?

3 A He was he was moving from the van to the door to assist
4 Agent O'Connor.

5 Q He was in front of you, correct?

6 A Correct.

7 Q Going back to inside the motel room, how many other
8 agents -- I'm sorry, withdrawn.

9 Did other agents join you in the hotel room?

10 A At times. There was more than one occasion where an
11 agent would enter, assist and leave, enter, bring information
12 and leave. We did have radios on but the radios we had -- we
13 were turning them off because we did not want the defendant to
14 hear what was being transmitted or it is standard for state of
15 security but we also had phones, again, to bring information
16 or assist or come in, but three that were in constantly were
17 O'Connor, Samilo and myself. The others were -- had come in,
18 come out.

19 Q So at times they were as many as five or six agents in
20 the room at a time?

21 A There weren't that many agents in the room at a time
22 until the end when it was time to gather her belongings and
23 leave.

24 Q Now --

25 A Maybe four agents at a time.

Aceves - cross/ Harris

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1 Q While Ms. Marin Moreno was handcuffed you said she was
2 seated, correct?

3 A Correct.

4 Q And Agent O'Connor was standing next to her, correct?

5 A I don't know if she was standing next to her the entire
6 time when we were searching and doing other things. She was
7 seated and cuff but there wasn't somebody next to her the
8 entire time.

9 Q Now, you testified that you read her the consent form,
10 correct?

11 A Correct.

12 Q And you read it to her exactly as it's written on the
13 form, correct?

14 A Umm, not exactly. I misspelled a word which I pronounced
15 correctly but spelled incorrectly.

16 Q What word was that?

17 A Amenazada A-M-E-N-A-Z-A-D-A. That's the correct
18 spelling of the word.

19 Q And at the time that you read her the language of the
20 consent form how many agents were in the room?

21 A Three.

22 Q And you didn't add --

23 A Three, including myself.

24 Q You didn't add any of your own advice, correct?

25 A No.

Aceves - cross/ Harris

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1 Q No other agents give her advice concerning the consent
2 form, correct?

3 A Concerning the consent form, no.

4 Q Did any other agent give her advice at all?

5 A Concerning?

6 Q Concerning anything relating to the events that
7 transpired that day?

8 A Could you be more specific?

9 Q Well --

10 A I don't know exactly what you --

11 Q Did any other agents speak to her directly?

12 A Almost all questions were directed through me because I
13 was the only Spanish speaker. Agent O'Connor was able to ask
14 tu nombre. Simple questions like that, but she pretty much
15 let most of it go through me since I'm the only Spanish
16 speaker.

17 Q Did anyone advise Ms. Marin Moreno that it was in her
18 interest to cooperate?

19 A I believe that at one point that was stated.

20 Q And who made that statement?

21 A I don't recall.

22 Q But it was made through you, correct?

23 A Yes, so at one point I would have said it whether --
24 regardless of who had come through I would have said it at
25 some point.

1 THE COURT: Was it before or after she executed the
2 consent to search, if you remember?

3 THE WITNESS: I believe that was after.

4 THE COURT: What's next?

5 Q Now, when she signed the consent form you had to uncuff
6 her, correct?

7 A Yes.

8 Q Now, you testified in fair detail about the cylinders
9 that you found in one of her suitcases?

10 A They were found by Agent Samilo and I inspected them once
11 they were removed. I was on the bed with one bag and he was
12 on the bed next to me with another bag. I'm going through my
13 bag and he's pulling them out next to me.

14 Q What bag did he find them in?

15 A I believe -- you have to ask him specifically but I
16 believe they're in the black bag.

17 Q And did you see how the cylinders were packed in the bag?

18 A No. He stated that they were wrapped within the clothing
19 in the bag; that the clothing was wrapped around them within
20 the bag, and I believe that might be stated in one of the
21 reports.

22 Q Now, you testified that you seized one cellular phone,
23 correct?

24 A There was a cellular phone, yes.

25 Q And you took it, correct?

Aceves - cross/ Harris

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1 A Correct.

2 Q And when you took the phone did you check to see if
3 there'd been any calls made?

4 MR. KAZEMI: Objection; beyond the scope of the
5 direct.

6 THE COURT: Yes, I don't see what the relevance is.
7 Go ahead. What's next?

8 MS. HARRIS: Your Honor, the witness had indicated
9 that he'd been using her cell phone as a basis for probable
10 cause.

11 THE COURT: Yes.

12 MS. HARRIS: I wanted to see if he verified --

13 THE COURT: They certainly don't know anything beyond
14 the fact that the cellular phone was being used, which is
15 certainly not incriminating in this city. Go ahead.

16 Q Now, you didn't get a warrant that day, correct?

17 A No.

18 Q And you know who you go to, to get a warrant; correct?

19 A Yes.

20 Q You know you can get a telephonic warrant, correct?

21 A I believe we can get a telephonic warrant.

22 MS. HARRIS: Judge, can I have one moment, Your
23 Honor (perusing)?

24 THE COURT: Yes.

25 (Pause)

Aceves - cross/ Harris

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1 Okay. Is that it?

2 MS. HARRIS: Just one moment, Judge. I'm sorry.

3 Q Two other questions.

4 In the beginning I had asked you whether or not it
5 was unusual to receive a tip in such detailed information.

6 Now, I wasn't sure if you'd answered. I would ask you that
7 again, isn't it unusual to receive a tip with such detailed
8 information?

9 A I believe I'd answered it and stated that quite possibly
10 the other tips with this investigation had given such details
11 to allow similar seizures because to find a hidden compartment
12 within a passenger bus one would have had to have had plenty
13 of detail. Passenger buses are a thousand a day between small
14 cities, and not only that, but to find there was a hidden
15 compartment on a passenger bus would be extremely difficult
16 without specifics.

17 Q My question was about tips that you received.

18 A Tips that I have received? I have received tips that
19 have given me exact time, date and location.

20 Q I want to show you what was marked as Government
21 Exhibit 3500 SA-1. No, I'm sorry. I'm sorry. SA-4 (handing to
22 the witness).

23 A Thank you (perusing).

24 Q That's a report that you prepared, correct?

25 A Yes.

Aceves - cross/ Harris

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1 Q And that's a report containing Ms. Marin Moreno's
2 statements on the day of her arrest, correct?

3 A I believe there may be statements in here but I don't see
4 them right now.

5 Which paragraph are you referring to (perusing)?

6 MR. KAZEMI: Your Honor, is there a question here?

7 THE COURT: Yes, whether this is a court statement
8 made by the defendant.

9 Q In paragraph six.

10 If you can draw your attention to paragraph six.

11 A Umm-Humm (perusing). Yes.

12 Q That contains a summary of the statements she made that
13 day, correct?

14 THE WITNESS: Could I have a second to read it?

15 THE COURT: Yes, go ahead.

16 (Pause)

17 A Yes.

18 Q And other than what's written in that report, Ms. Marin
19 Moreno didn't make any other statements that day, correct?

20 A No, that's incorrect. She -- I am sure she may have said
21 other things that day. That would be unlikely for her to have
22 said two or three things.

23 Q Well, can you -- other than what's written in that
24 report, can you remember sitting here today what other
25 statements Ms. Marin may have made?

1 THE COURT: Counsel, this is not discovery. What's
2 the point of this?

3 MS. HARRIS: Your Honor, to the extent that my client
4 made other statements to law enforcement, we are certainly
5 entitled to know about it.

6 THE COURT: Yes, but not as far as this hearing
7 goes. That is something that you get in discovery; not in a
8 hearing of this sort.

9 All right. What's next?

10 MS. HARRIS: I have no further questions.

11 THE COURT: Do you have any other questions?

12 MR. KAZEMI: Very briefly, Your Honor.

13 REDIRECT EXAMINATION.

14 BY MR. KAZEMI:

15 Q Good afternoon, Agent Aceves.

16 A Good afternoon.

17 Q First when you entered the room did you know the
18 defendant was armed?

19 A No.

20 Q And Ms. Harris asked you if you had obtained a warrant,
21 you said you didn't obtain a warrant. Why didn't you obtain a
22 warrant?

23 A When the initial information came in I was told the
24 courier was there and that the transaction would be taking
25 place at any moment. There wasn't enough time. My focus was

1 on getting to the hotel and establishing the surveillance
2 immediately.

3 Q And prior to July 31st you had worked with Agent Walsh
4 before?

5 A Yes.

6 Q And you worked with him on investigations?

7 A Yes.

8 Q And some of these investigations involved wiretaps?

9 A Yes.

10 Q And other investigations yielded reliable information?

11 A Yes.

12 Q Now, when you approached -- when you were surveilling
13 room 166 of the Metro hotel, you were basing that surveillance
14 on information you obtained from Agent Walsh?

15 A Yes.

16 Q But you didn't immediately arrest the defendant when you
17 arrived at room 166?

18 A No.

19 Q Did anything else happen after you arrived at room 166
20 which then led to your --

21 THE COURT: That we have not heard about already, is
22 that what your question is? Is there anything else you
23 haven't mentioned?

24 THE WITNESS: I'm sorry. Could you repeat the
25 question?

O'Connor - direct/ Kazemi

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1 THE COURT: The question is whether you told us
2 everything that happened before you arrested the defendant.

3 Q Well, my question is did the defendant's conduct in any
4 way lead to her arrest?

5 A The conduct that she walked to her room?

6 Q Yes.

7 A It was suspicious the way she entered and looked around,
8 entered and looked around, but other than that, and the walk
9 she took, that was the only thing I saw suspicious.

10 Q And the defendant's attempt to close the door when she
11 saw Agent O'Connor?

12 THE COURT: Come on, counsel, just leading the
13 witness. Anything more?

14 MR. KAZEMI: Nothing further, Your Honor.

15 THE COURT: All right. You can step down.

16 Do you have another witness ready to go or not?

17 MR. KAZEMI: Your Honor, we would like to call Agent
18 O'Connor very briefly to testify to the entry into the room.

19 THE COURT: Okay. Could you come up, ma'am. Have a
20 seat and be sworn.

21 E L I Z A B E T H O ' C O N N O R , having been first duly
22 sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. KAZEMI:

25 Q Good afternoon, Agent O'Connor.

1 By whom are you employed?

2 A The Drug Enforcement Administration.

3 Q And what is your title?

4 A Special agent.

5 Q How long have you been a DEA special agent?

6 A Approximately 11 years.

7 Q Directing your attention to the morning of July 31st,
8 2008, where were you assigned at that time?

9 A To the New York Field Division.

10 Q Did you have information involving the investigation of
11 the defendant Norby Marin Moreno?

12 A Yes, I did.

13 Q How did you obtain that information?

14 A Through Special Agent Sal Aceves.

15 Q As a result of that information did you assist in
16 establishing surveillance of room 166 of the Metro hotel?

17 A Yes, I did.

18 Q And approximately, what time did you establish
19 surveillance at the hotel?

20 A Surveillance was established at, approximately, twelve
21 noon.

22 Q And who established that initial surveillance?

23 A Special Agent Sal Aceves and Special Agent David Samilo.

24 Q Did there come a time when an individual entered room
25 166?

O'Connor - direct/ Kazemi

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1 A Yes.

2 Q How was that individual described?

3 A Hispanic female, heavy set.

4 Q And approximately, what time did that individual enter
5 room 166?

6 A I believe it was about 12:30.

7 Q And were you on surveillance at that time?

8 A No, I was not.

9 Q How did you learn the individual had entered the room at
10 that time?

11 A I received a telephone call from Special Agent Aceves.

12 Q Did you subsequently establish --

13 THE COURT: From special agent who?

14 THE WITNESS: Aceves.

15 THE COURT: Okay.

16 Q And was that individual later identified as the defendant
17 in this case Norby Marin Moreno?

18 A Yes.

19 Q After the defendant entered room 166 did there come a
20 time that you established surveillance at the Metro hotel?

21 A Yes.

22 Q Approximately what time was that?

23 A Approximately one p.m.

24 Q I'm showing you what's been previously admitted into
25 evidence as Government Exhibit Six. Do you recognize that

1 photograph?

2 A Yes, I do.

3 Q Could you please tell the Court what that photograph is?

4 A This photo is a picture of the interior hallway of the
5 Metro hotel.

6 Q When you arrived at the Metro hotel where did you
7 establish your surveillance?

8 A I established foot surveillance. I walked around the
9 hotel, both outside and inside, and eventually I put myself in
10 the interior hallway.

11 Q And at that time what did you learn when you were
12 surveilling the interior hallway?

13 A I learned that there was an interior doorway to the room
14 that the defendant was in as well as an exterior doorway.

15 Q And what did you do after discovering the interior
16 doorway?

17 A I posted another agent at the interior doorway.

18 Q And what happened next?

19 A A short time after I asked one of the chambermaids to
20 come with me to the exterior door of the hotel.

21 Q Could you please describe the chambermaid for the Court?

22 A Female middle age Hispanic.

23 Q What did you ask the chambermaid to do at that point?

24 A I asked her to knock on the door.

25 Q And did she, in fact, knock on the door?

O'Connor - direct/ Kazemi

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1 A Yes, she did.

2 Q And what happened after she knocked?

3 THE COURT: Did she say anything as she knocked or
4 just knocked?

5 THE WITNESS: I believe she said room service or
6 maid service. Something to that effect.

7 THE COURT: And was she dressed in any uniform or
8 not, if you remember?

9 THE WITNESS: Yes, Your Honor, she was.

10 THE COURT: How was she dressed?

11 THE WITNESS: I don't know what color but a dress, a
12 solid color uniform dress.

13 THE COURT: Okay.

14 Q And what happened after the maid knocked on the door?

15 A The defendant opened the door, made eye contact with the
16 maid, smiled and she looked at, me and the smile dropped from
17 her face, and she went to slam the door in my face.

18 Q Were you wearing any identification that would indicate
19 that you were --

20 THE COURT: Well, come on, counsel.

21 MR. KAZEMI: I apologize.

22 Q What were you wearing at that time?

23 A I was wearing my badge.

24 Q And what happened after the maid attempted to close the
25 door?

O'Connor - direct/ Kazemi

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1 A The defendant --

2 Q I'm sorry. The defendant attempted to close the door.

3 A I put my hand up to block the door from closing
4 completely.

5 THE COURT: Were you wearing a bullet proof vest at
6 the time or not?

7 THE WITNESS: No, Your Honor.

8 THE COURT: Okay. What's next?

9 Q And when you --

10 THE COURT: Excuse me just a moment.

11 Your badge, do you have that with you? Did you have
12 that with you?

13 THE WITNESS: I have it with me in the hallway in my
14 bag. I'm sorry.

15 THE COURT: How large is it?

16 THE WITNESS: Maybe two and a half inches.

17 THE COURT: Okay, and it's what? Silver, gold?

18 THE WITNESS: Gold.

19 THE COURT: And you were wearing it on a chain?

20 THE WITNESS: I was wearing it on my hip.

21 THE COURT: Okay.

22 Q What happened after you pushed the door open?

23 A I gave the defendant commands. I said calm trankuila. I
24 said we are the police and I kept repeating those commands.

25 Q And did the defendant physically resist you?

O'Connor - cross/ Harris

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1 A Yes, she did.

2 Q Was your firearm drawn at that time?

3 A No, it was not.

4 Q And what happened as a result of the physical altercation
5 between you and the defendant?

6 A I grabbed her left hand and tried to get her cuffed and I
7 was unable to do so, and I asked for assistance from Special
8 Agent Samilo.

9 Q Was the defendant actually subdued?

10 A Yes, she was.

11 Q And was she handcuffed at that time?

12 A Yes, she was.

13 Q And why you did handcuff her?

14 A It is our policy to handcuff defendants, and quite
15 frankly, you know, she resisted once, and I didn't want her to
16 do it again.

17 MR. KAZEMI: No further questions, Your Honor.

18 THE COURT: All right. Do you have any questions?

19 MS. HARRIS: I do.

20 CROSS-EXAMINATION

21 BY MS. HARRIS:

22 THE COURT: When you said "police" did you announce
23 -- when you are supposed to announce who you are did you do
24 that or not?

25 THE WITNESS: Initially when I came to the door,

O'Connor - cross/ Harris

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1 Your Honor, I was concerned with restraining the defendant.

2 THE COURT: Sure.

3 THE WITNESS: She was fighting with me and I said
4 calm down, police, calm down. Calm trankuila.

5 THE COURT: And did you wear you badge on your hip or
6 your belt? That is not very visible, is it?

7 THE WITNESS: That's where I've been wearing it my
8 whole career.

9 THE COURT: Okay.

10 THE WITNESS: I'm a plain clothes police officer. I
11 know you realize that but it is just where I feel comfortable.
12 I didn't feel comfortable with the chain around my neck where
13 somebody could grab it and choke me with it.

14 THE COURT: All right. Go ahead.

15 BY MS. HARRIS:

16 Q When you received -- good afternoon.

17 When you received the information that someone
18 matching the description of Norby had arrived at the hotel
19 where were you?

20 A I was in my car driving to the location.

21 Q And could you describe what you were wearing that day?

22 A Yes. I had a short sleeve white golf shirt, so to speak,
23 not a big one. A small one, and I had green capri slacks on.
24 Khaki green capri slacks and loafers.

25 Q Was the shirt tucked in?

O'Connor - cross/ Harris

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1 A No.

2 Q And do you recall what the other agents -- I'm sorry.
3 Withdrawn.

4 Do you recall what Agent Aceves were wearing that
5 day?

6 A Pants, short sleeve T-shirt and he had his vest on, I
7 believe.

8 Q And do you recall what Agent Samilo was wearing that day?

9 A Pants, short sleeve shirt, and also a vest.

10 Q A vest over his shirt?

11 A Correct.

12 THE COURT: And when you say, "a vest," was it a
13 bullet proof vest?

14 THE WITNESS: Yes, Your Honor.

15 Q You described the chambermaid as middle aged Hispanic
16 woman?

17 A To the best of my recollection, yes.

18 Q And can you give a fuller physical description of her?

19 A Not any more than what I did.

20 Q Color of her hair?

21 A No.

22 Q Light skinned?

23 A No. I would say medium.

24 Q When the door was opened Agent Samilo was approaching
25 behind you?

O'Connor - cross/ Harris

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1 A No, he was off to the side.

2 Q And where was Agent Aceves?

3 A He was also off to the side.

4 Q And let me show you --

5 MS. HARRIS: I'm sorry, Your Honor. I misplaced
6 exhibits -- let me show you Government Exhibit Five.

7 THE COURT: Can you see that?

8 THE WITNESS: Yes, Your Honor.

9 Q That shows the exterior of the Hotel Metro; is that
10 correct?

11 A Correct.

12 Q And room 166 is, approximately, where the tip of that
13 mini van is?

14 A Yes.

15 Q And perhaps --

16 MS. HARRIS: May I approach, Your Honor?

17 Q (Cont'd): Indicating on that photograph could you show
18 us first where Agent Samilo was, approximately, when the door
19 was opened?

20 A You see the cone there, this is the doorway here. He was
21 right here. That's Samilo.

22 Q Where that orange cone is?

23 A Yes, I would say, approximately, yes.

24 Q And Agent Aceves?

25 A Was over here near the cone as well.

O'Connor - cross/ Harris

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1 Q When Ms. Marin Moreno attempted to close the door you
2 reached in, correct?

3 A Yes.

4 Q You grabbed Ms. Marin Moreno by the wrist?

5 A I stopped the door first and then I grabbed her by the
6 wrist.

7 Q Eventually the agents handcuffed her, correct?

8 A We struggled first.

9 Well, actually our hands were clasped and we
10 struggled, and I grabbed her. It would be her left hand, and
11 brought around her back and her right hand was underneath her,
12 at which time I called for Special Agent Samilo to assist me
13 with cuffing her.

14 Q Is it fair to say that the struggle lasted just a few
15 seconds, correct?

16 A Yes, less than a minute.

17 Q And so you handcuffed her in the back, correct?

18 A Correct. It is our policy.

19 Q You seated her?

20 A Yes.

21 Q On a chair?

22 A Yes, initially on the bed, and then moved her to a chair.

23 Q And you stood near her during the time that you were in
24 the hotel room, correct?

25 A Yes, not right by her, but within a few feet of her.

O'Connor - cross/ Harris

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1 Q Did you ask Ms. Marin any questions?

2 A Yes.

3 Q What did you ask her?

4 A I asked her for identification.

5 MR. KAZEMI: This is beyond the scope of direct.

6 THE COURT: Now, when did this -- when did this
7 happen that you asked questions?

8 THE WITNESS: After she -- Your Honor, after she
9 calmed down and she realized, I think, that we were the police
10 and not there to rob her is when I began to ask her who she
11 was. Conducted the interview.

12 THE COURT: I'll permit it.

13 Q What else did you ask her?

14 A I asked her her name, I asked her for identification, I
15 had asked her what the purpose was of her travel here in New
16 York and I asked her who she was here to see.

17 Q What did she tell you?

18 A She told us where her passport was. Confirmed her
19 identity. She showed us her airlines tickets. We saw when
20 she left, and she told me why she was here. She told me she
21 was here to see her cousin.

22 THE COURT: See her?

23 THE WITNESS: Cousin.

24 Q Now, did there come a time when Agent Aceves presented
25 her with a Consent to Search Form?

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1 A Yes.

2 Q And approximately, how many minutes after you entered the
3 room was that form presented to Ms. Marin Moreno?

4 A I can't say exactly for sure, but maybe 30, 40 minutes
5 after.

6 Q And had agents begun to search the room?

7 A Only after she signed the form.

8 I want to clarify. We did a security sweep of the
9 room when we entered to make sure there was no one else there,
10 but as far as searching her bags, that wasn't conducted until
11 after she signed the form.

12 Q And during that 30 to 40 minutes you're conversing with
13 Ms. Marin Moreno, correct?

14 A Yes, I was conversing through Special Agent Aceves and I
15 was also receiving phone calls from agents who were on
16 surveillance. There was a lot going on, but yes.

17 Q During that entire time period she was handcuffed,
18 correct?

19 A I would say so, yes.

20 Q And other agents would periodically come into the room,
21 correct?

22 A Basically it was the three of us, Special Agent Samilo
23 and myself and Special Agent Aceves who were in the room.
24 Special Agent Sy came in afterwards. She was uncuffed to sign
25 the form.

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1 Q But then she was cuffed again, correct?

2 A Correct.

3 Q And did you at any time tell her that it was in her
4 interest to cooperate with the agents?

5 MR. KAZEMI: This is all beyond the scope of direct.

6 THE COURT: Well, I still think it's relevant to get
7 it out.

8 Go ahead. What's the question?

9 Q Did you at anytime tell Ms. Marin Moreno that it was in
10 her interest to cooperate?

11 A I said to her -- I said there was -- you know, we weren't
12 here by mistake, and I said if there's something here that you
13 want to tell us or if there's something here that shouldn't be
14 here it's in your best interest to tell us now while you can
15 before we find it on our own.

16 Q And you told her that during the 30 or 40 minutes
17 preceding the execution of the consent form, correct?

18 A I believe so.

19 Q You recall any other agents telling her that it was in
20 her interest to cooperate?

21 A I do not recall that.

22 Q But at no time did she admit that she had any narcotics
23 in her possession, correct?

24 A Correct.

25 MS. HARRIS: If I could have one moment, Your Honor?

O'Connor - cross/ Harris

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1 THE COURT: Yes.

2 Q I'm sorry.

3 When you entered -- when you entered room 166 you
4 had a weapon, correct?

5 A I had a weapon, yes.

6 Q Was it drawn?

7 A No, it was not drawn.

8 Q And Agent Samilo, he was somewhat obscure, to the side of
9 door, correct?

10 A Yes.

11 Q And did he have his weapon drawn?

12 A I didn't see it drawn. To my understanding he did have it
13 drawn but I went in first and he came in behind me.

14 MS. HARRIS: Okay. One moment, Your Honor.

15 Q One last question.

16 The maid who knocked on the door, you had asked her
17 to knock on the door, correct?

18 A That's correct.

19 Q And did she speak English?

20 A I am assuming she did because she understood what I said.

21 Q And did she -- did you hear her say anything when she
22 knocked on the door?

23 A I don't recall but I think she said room service or
24 something to that effect.

25 THE COURT: Okay.

1 MS. HARRIS: Nothing further.

2 THE COURT: Anything further?

3 MR. KAZEMI: Nothing further.

4 THE COURT: All right. You may step down.

5 We'll break. You are going to look into if we can
6 get some more information about this conversation overheard in
7 Colombia?

8 MR. KAZEMI: Yes.

9 THE COURT: And are you going to have any evidence
10 you will present tomorrow or not?

11 MS. HARRIS: I don't believe so, Your Honor.

12 THE COURT: All right. I will see you back here at
13 -- what did you say, 10:30 tomorrow?

14 MS. HARRIS: Yes, Your Honor.

15 MR. KAZEMI: Thank you, Your Honor.

16 MS. HARRIS: Your Honor, I would request that the
17 government try to produce for us the transcript which I
18 understand the names may be an issue but --

19 THE COURT: What transcript?

20 MS. HARRIS: Of the conversation that was listened to
21 in Colombia.

22 THE COURT: Does anybody have access to that
23 transcript?

24 SPECIAL AGENT ACEVES: Excuse me. We will be more
25 than happy to provide that, but that won't be possible by

1 tomorrow.

2 THE COURT: All right. I will see you back here
3 tomorrow.

4 (Proceedings adjourned as above set forth)

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